

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

FREE SPEECH COALITION, INC.,)	09-CV-4607
et al.,)	
)	
Plaintiff,)	
)	
vs.)	
)	Philadelphia, PA
THE HONORABLE ERIC H. HOLDER, JR.,)	
in his Official Capacity as)	
Attorney General of the United)	
States, et al.,)	
)	June 4, 2013
Defendant.)	9:13 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE MICHAEL M. BAYLSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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I N D E X

WITNESSES: THE COURT DIRECT CROSS REDIRECT RECROSS

FOR THE PLAINTIFF:

Linda Diane Wilson	37		4/Bla		
Carol Queen	91	49/Mur	77/Swi	99/Mur	104/Sch
Stephen Steinberg	111, 116	105/Mur	137/Sch	153/Mur	
Carlin Ross	185	155/Mur	176/Bla	191/Mur	
Betty Dodson		194/Mur	202/Sch		
Barbara Alper	229, 243	217/Mur	232/Sch	241/Mur	248/Sch
Thomas Hymes	265	251/Mur	257/Wye		

EXHIBITS:FOR THE PLAINTIFFS:Ident. Evid.

P-43	Photograph		229
P-45	Video, <u>Self-Loving</u>		174
P-46	Video, <u>Viva La Vulva</u>		174
P-47	Video, <u>Celebrating Orgasm</u>		174
P-50	Video, <u>The Orgasm Doctor</u>		174
P-51	Image from Genital Art Gallery		174
P-52	Video page from dodsonross.com		174
P-61	Photographs		135
P-62	Photographs		135
P-63	Photographs		135
P-64	Daily Babylon website		157
P-117	Video, <u>Betty Dodson's Body Sex Workshop</u>		174
P-118	<u>Betty Dodson, Her Life of Sex and Art</u>		174

1	(Index/Exhibits continued)	<u>Ident.</u>	<u>Evid.</u>
2	<u>FOR THE DEFENSE:</u>		
3	D-77 Printout from DailyBabylon.com		260
4	D-122 Printout of the SinclairInstitute.com		13
5	D-123 Printout of BetterSex.com		14
6	D-124 Printout of movies		21
7	D-125 Printout of movies		21
8	D-126 Printout of movies		21
9	D-128A-C Unidentified document		36
10	D-129A-D Movie catalog		25
11	D-133 Townsend-Sinclair video sales, 2005-2009		133
12	D-148 to D-155 Photographs		152
13	D-168 Photograph		152
14			

Wilson - Direct (Bla)

4

1 (The following was heard in open court at 9:13 a.m.)

2 ALL COUNSEL: Good morning, Your Honor.

3 THE COURT: Okay. Are we ready to continue?

4 MR. MURRAY: Yes, we are.

5 THE COURT: Witness here, please?

6 MR. MURRAY: Yes.

7 THE COURT: Good morning. Ms. Wilson. All right.

8 Everyone be seated. Okay. Good morning.

9 THE WITNESS: Good morning.

10 THE COURT: State your name for the record.

11 THE WITNESS: Linda Diane Wilson.

12 THE COURT: All right. You're still under oath.

13 Have a seat. Thank you.

14 MR. BLADUELL: May I --

15 THE COURT: Go ahead.

16 MR. BLADUELL: -- proceed, Your Honor?

17 THE COURT: Yes.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. BLADUELL:

20 Q Good morning, Ms. Wilson.

21 A Good morning.

22 Q Ms. Wilson, you testified that in the video, Provocative

23 Sex Play, there were 18-year-old -- 18 years old and 19 years

24 -- performers that are 18 years old and 19 years old, correct?

25 A That's where we were when we left off yesterday.

Wilson - Direct (Bla)

5

1 Q Now, Sinclair has had more individuals within the age
2 range of 18 and 20 in its videos, correct?

3 A Yes.

4 Q In fact, you've estimated that ten percent of the sexually
5 explicit depictions that Sinclair has produced have been of
6 individuals between the ages of 18 and 20, correct?

7 A I believe that that figure in my head is based on our
8 photo shoots and our videos, not just our videos.

9 Q Okay.

10 A The majority of our people in our videos are 30 years or
11 above.

12 Q And you've also estimated that 30 percent of individuals
13 appearing in your depictions, in Sinclair's depictions are in
14 the ages of 20 to 29.

15 A I believe ten percent 18 to 20.

16 THE COURT: What percent?

17 A Ten percent 18 to 20, 30 percent 20 to 29, and then 40
18 percent in their 30s, and then the rest in their like 40s, 50.

19 BY MR. BLADUELL:

20 Q So ten percent in their 40s.

21 A No. I think more than ten percent in their 40s.

22 Q Okay. Well, that's not what you've stated in
23 interrogatories, correct?

24 A You just asked me if ten percent of our -- of the people
25 in our videos or 30 percent of people in our videos were

Wilson - Direct (Bla)

6

1 between the ages of 20 and 29.

2 Q Well, I --

3 THE COURT: Well, just a minute. Did she
4 specifically answer interrogatories or the company did?

5 MR. BLADUELL: The company.

6 THE COURT: Okay.

7 MR. BLADUELL: But --

8 THE COURT: Are they different?

9 MR. BLADUELL: It was --

10 THE COURT: Well, show it to her.

11 MR. BLADUELL: Okay. Let me pull up Exhibit number
12 132, please.

13 BY MR. BLADUELL:

14 Q Ms. Wilson, this is the interrogatory responses for
15 plaintiff, Sinclair Institute, correct?

16 A Correct.

17 Q And your name is at the bottom of this document, Exhibit
18 132?

19 A Yes. That's correct.

20 Q And you helped answer these interrogatories, correct?

21 A That is correct.

22 Q Now, if we go to interrogatory number 9, you see, Ms.
23 Wilson, in interrogatory number 9, that it's asking you to give
24 a breakdown of the ages of performers?

25 A Yes. I see that.

Wilson - Direct (Bla)

7

1 Q And you've estimated ten percent between 18 to 20?

2 A Yes.

3 Q And --

4 A Thirty percent in their 20s, 40 percent in their 30s, ten
5 percent over 40, and --

6 THE COURT: How's that different than --

7 A -- ten percent over 50.

8 THE COURT: How's that different than her testimony?

9 MR. BLADUELL: Your Honor, I believe that she said
10 more of ten percent in their 40s. So that was a contradictory
11 part.

12 THE COURT: This is not a memory quiz. That's not
13 a --

14 THE WITNESS: I believe I was a little confused --

15 THE COURT: Just a minute. That's not a
16 contradiction.

17 THE WITNESS: -- by your question. You had several
18 questions at once there.

19 MR. BLADUELL: I just want --

20 THE COURT: If that's the most serious contradiction
21 you have --

22 MR. BLADUELL: No, Your Honor.

23 THE COURT: -- we're going to be here for like a
24 month. Okay? That's absurd.

25 MR. BLADUELL: I just wanted to make the record

Wilson - Direct (Bla)

8

1 clear.

2 THE COURT: That's absurd. Move -- next --

3 MR. BLADUELL: Next question. Okay, Your Honor.

4 BY MR. BLADUELL:

5 Q Now, it is correct to say that the Sinclair Institute does
6 not restrict performers in its videos to people over 25?

7 A No. We do not restrict our performers to the ages of over
8 25.

9 Q As long as a performer is 18 years old, he can be employed
10 by Sinclair in its videos, correct?

11 A All of our -- the people in our videos and our photo
12 shoots are adults 18 and over.

13 Q Okay. Now, Sinclair Institute maintains IDs and model
14 releases of these performance for business reasons other than
15 2257, correct?

16 A That's correct.

17 Q These IDs and model releases are part of the contract that
18 you have with its performers.

19 A Yes. We want to make sure that it's very clear that we
20 have rights to the pictures that we take and to the footage.

21 Q Besides selling videos such as Provocative Sex Play, which
22 is a video that Sinclair itself creates, Sinclair also sells
23 sexually explicit videos from other companies.

24 A That's correct.

25 Q For example, Sinclair sells videos from Wicked Pictures?

Wilson - Direct (Bla)

9

1 A That's correct.

2 Q And a company called Sweet Center?

3 A Yes. That's correct.

4 Q And a company called Platinum Media?

5 A That's correct.

6 Q And Pulse Pictures?

7 A Yes.

8 Q And, in fact, the majority of the videos, sexually
9 explicit videos that Sinclair sells are videos from other
10 companies, correct?

11 A I don't know the exact number. We sell many videos from
12 other companies, but I'm afraid I don't know the exact
13 breakdown of that. I'm unable to tell you that with certainty.

14 Q Are you able to tell -- you're not able to tell us that
15 the number of sexually explicit videos from other companies
16 that Sinclair sells is more than the ones that Sinclair itself
17 creates?

18 A Over a period of time, yes. I think that's true. Yes.

19 Q Okay. Now, do you remember that Sinclair has estimated
20 that it has produced 160 videos?

21 A That we are the primary producer of?

22 Q Correct.

23 A That sounds about right.

24 Q And that you -- that you carry an additional 1,600 titles
25 for which you're a secondary producer?

Wilson - Direct (Bla)

10

1 A Over a period of time, yes.

2 Q And Sinclair sells these videos in the website,
3 SinclairInstitute.com, correct?

4 A SinclairInstitute.com, it's quite different from
5 BetterSex.com, and BetterSex.com would be where you would find
6 the majority of movies that we sell that come from other
7 companies where we would be the second --

8 THE COURT: One second. What is that called?

9 THE WITNESS: BetterSex.com. It's another website
10 that we do E-commerce on.

11 BY MR. BLADUELL:

12 Q Let me show you Exhibit number 122, please. Ms. Wilson,
13 this is -- you've seen this document before, correct?

14 A Yes, I have

15 Q And this is a printout of the SinclairInstitute.com,
16 correct?

17 A That's correct.

18 Q And it has -- it displays some movies, correct?

19 A Yes. I see Three Thumbs there.

20 Q And in your website, there's a search box where one can
21 enter words and search for that?

22 A Search for --

23 Q For the words.

24 A For performers, for adult videos. Search terms are
25 changing all the time.

Wilson - Direct (Bla)

11

1 Q Okay.

2 A It's really quite a dynamic business running a website.

3 So --

4 Q Okay.

5 A -- I don't know what search terms are available to an
6 individual, because I have never searched our website.

7 Q Okay. Now, you've seen this document, Exhibit 122, that
8 it says search results for young, correct, right in the middle?

9 A In the search box.

10 Q Well, in the search box, there's young, the word young.

11 A Search results for young. I do --

12 Q Okay.

13 A -- see that now. Yes.

14 Q And it displays some videos.

15 A Yes, and Nina Hartley shows up, which is unusual, because
16 she's -- I think she's probably in her 40s, late 40s.

17 Q You're aware that Nina Hartley is a plaintiff in this
18 case?

19 A I think I heard that in court yesterday. Yes.

20 Q And you're familiar with some of these titles, for
21 example, Teach Me?

22 A Yes. I remember seeing this when we were in the
23 deposition.

24 Q That's something that you sell on Sinclair's website?

25 A Yes.

Wilson - Direct (Bla)

12

1 Q And if we see the next page, it has more titles. You're
2 familiar with the title, Bush, correct?

3 A Yes.

4 Q And underneath that, Wet and Nasty Amateurs?

5 A Yes.

6 Q If we go to the next page, please. You're familiar with
7 Pig and Five Strap-On Love Story?

8 THE COURT: Well, I don't -- what's the
9 significance --

10 THE WITNESS: Yes.

11 THE COURT: -- if she's familiar with some of these?

12 MR. BLADUELL: I just want to admit the document.

13 THE COURT: Well, if the document is admitted,
14 they'll all be in --

15 MR. BLADUELL: Okay.

16 THE COURT: -- in the record. I don't know if you --
17 what point you're trying to make that she's familiar with some
18 of them but not others, or if you want to ask her if she's
19 familiar with all of them, you can do that. What's the point
20 of asking her about specific movies? That's what I don't
21 understand.

22 MR. BLADUELL: Well, I just -- I just wanted to make
23 sure that she's -- that she has -- that she's familiar with
24 some of these movies, so I can get it admitted.

25 THE COURT: Are you familiar with all these movies on

Wilson - Direct (Bla)

13

1 this?

2 THE WITNESS: If this genuinely is our website, I
3 would have pretty recent memory of most of them, because we try
4 to have --

5 THE COURT: There you.

6 THE WITNESS: -- the most current stuff on the --

7 THE COURT: There's no point of asking her about
8 individual ones if she's familiar with the whole thing, right?

9 MR. BLADUELL: Okay. Your Honor, then I move to
10 admit exhibit number --

11 THE COURT: Admitted.

12 MR. BLADUELL: -- 122.

13 THE COURT: Admitted. Any objection?

14 MR. MURRAY: No objection, Your Honor.

15 THE COURT: Admitted. There you go.

16 MR. BLADUELL: And if we -- let's go to Exhibit 123,
17 please.

18 BY MR. BLADUELL:

19 Q Ms. Wilson, do you recognize this as a printout of
20 BetterSex.com?

21 A Yes. This is our other website.

22 Q And are you familiar with some of the titles that appear
23 on this document?

24 MR. MURRAY: Your Honor, we have no objection to the
25 admission of this exhibit --

Wilson - Direct (Bla)

14

1 THE COURT: Okay.

2 MR. MURRAY: -- without any testimony by our witness.

3 THE COURT: Okay. You want it admitted?

4 MR. BLADUELL: So then I would move to admit it,
5 please.

6 THE COURT: Admitted. Next question.

7 BY MR. BLADUELL:

8 Q Now, I'm going to show you exhibit number 124A, please.

9 THE COURT: What is the search -- wait a minute.
10 What is the search term in 123?

11 MR. BLADUELL: Oh.

12 THE COURT: What's the significance of this exhibit
13 in your mind?

14 MR. BLADUELL: Oh, Your Honor, we just wanted to
15 provide a printout of the BetterSex.com, which is another --

16 THE COURT: Is there a search term there or no?

17 MR. BLADUELL: There's no search term there.

18 THE COURT: All right. Okay. Go ahead.

19 BY MR. BLADUELL:

20 Q Ms. Wilson, do you recognize Exhibit 124?

21 A Yes.

22 Q And that's --

23 A The video, The Babysitter, Volume 3.

24 Q That's another movie that you sell?

25 A Yes, it is.

Wilson - Direct (Bla)

15

1 Q And the company is Sweet Center?

2 A Yes.

3 Q If we go to the second page of this Exhibit 124, there is
4 a description underneath the movie.

5 MR. BLADUELL: If we can highlight that.

6 BY MR. BLADUELL:

7 Q And I'm going to read the first sentence.

8 "Hunky man who is happily married to sensual
9 successful Zoey, but when he locks eyes with her new
10 babysitter, blonde 18-year-old Chastity, the two are instantly
11 smitten."

12 Correct?

13 A That's correct.

14 Q That's the description that appears on Sinclair's website.

15 A I believe this is BetterSex.com, but yes.

16 Q Well, then let's --

17 A Was it not? I mean, I don't think that matters really,
18 but --

19 Q Okay. Let me show you another exhibit, 124 -- 124B. Does
20 the movie, Wet and Nasty Amateurs --

21 A Yes.

22 Q -- you're familiar with?

23 A Yes.

24 Q Okay. And if we go to the second page, it has -- just
25 like the first movie, has a description there.

Wilson - Direct (Bla)

16

1 MR. BLADUELL: If we can highlight the description,
2 please?

3 BY MR. BLADUELL:

4 Q If we read the third sentence --

5 "Young, 18-plus, fresh faced gymnast, Trinity, and
6 her big man on campus, Bo, engage in positions even we've never
7 seen, peaking at both male and female ejaculation. Just as
8 wild, a youthful Santa Claus penetrates his sexy (inaudible)
9 climax under the Christmas tree".

10 Correct?

11 A Correct.

12 Q Exhibit number 124C. This is a movie called University of
13 Austin, and -- yes?

14 A Yes.

15 Q And the company that produced it is Adam & Eve Pictures?

16 A Yes.

17 Q And if we go to the next page of this exhibit, there's a
18 description, a title at the top.

19 MR. BLADUELL: If we can highlight it -- highlight
20 that.

21 BY MR. BLADUELL:

22 Q And the first sentence is "Better Sex brings you another
23 school girl 18-plus adult movie", correct?

24 A That's correct.

25 Q If we go to exhibit number 124F. The title of this movie

Wilson - Direct (Bla)

17

1 is 18 and Dangerous?

2 A Yes.

3 Q Sold on your website.

4 A On BetterSex.com, yes.

5 Q Okay. And you see there that it has a description
6 underneath.

7 A "Bodacious Shirley, 18-plus blond", in 18 and Dangerous.
8 Yes.

9 Q Okay. Now, let's go to 124J. This movie is called The
10 Romance Collection, three pack?

11 A That's correct.

12 Q And this is a proprietary title of the Sinclair Institute.

13 A In this -- on this particular video, I can't remember if
14 the films, Cabin Fever, The Hottest Bid, and The Voyeur were
15 actually filmed by us or if we licensed them and put our name
16 on them, but I can assure you everyone in the cast is over 18.

17 Q Okay. But you see on the top corner, it says Sinclair?

18 A That's right. We sell it under our name.

19 Q Okay.

20 A But this has been around a while before my time, I
21 believe. So --

22 Q And if we go to the next page of this Exhibit 124J, if we
23 focus on the first paragraph, we see on the third line, "The
24 arrival of a young 18-plus handyman."

25 A Yes. I see that.

Wilson - Direct (Bla)

18

1 Q Let's go to Exhibit 124M. This is an image from
2 BetterSex.com, your website.

3 A I'm not familiar with it, but I know that we carry My
4 Daughter's Boyfriend 2.

5 Q Okay. And if we go through the next page, that's another
6 image from My Daughter's Boyfriend as it appears on your
7 website?

8 A That's what it says. Yes.

9 Q With a young man behind a woman?

10 A Yes.

11 Q And then if we go to the next page, there's a description.
12 If we can highlight the description of the movie. The first
13 sentence describes, "A college freshman gets lucky with both
14 mother and daughter"?

15 A Yes.

16 Q Okay. If we go to 124R, this is another image that
17 appears on your website, correct?

18 A It looks -- it looks like it does.

19 Q Okay. From --

20 A I'm just not familiar with it.

21 Q From the movie, My Daughter's Boyfriend, Volume 3.

22 A I know we carry that film. Yes.

23 Q And if we see the description on the next page, the first
24 line is, "Sexual attraction so taboo, it begs to be broken",
25 and then a couple of lines below --

Wilson - Direct (Bla)

19

1 "Blond Chastity seduces why stable boy, Seth,
2 schooling him in all pleasure and intense intercourse
3 positions. Seth gives his college best, bringing his nubile
4 partner to scream in orgasm".

5 Correct?

6 A That's correct.

7 Q All right.

8 MR. BLADUELL: Let's go to exhibit number 125U,
9 please.

10 BY MR. BLADUELL:

11 Q You've seen this movie before, Ms. Wilson, correct?

12 A That's correct.

13 Q Petite Co-Eds II?

14 A Yes.

15 Q And then there's -- there's a description for this movie
16 as well on your website?

17 A I see it there below.

18 Q Yeah.

19 A It's fuzzy, bus --

20 Q And the first line is, "Over three hours of fresh-faced
21 newbies all under five-one, a hundred pounds, and sporting
22 beautiful, natural breasts", correct?

23 A That's correct.

24 Q Now, if we go to exhibit 125 -- 126A. Ms. Wilson, Exhibit
25 126A is a title called My Mother's Best Friend, correct?

Wilson - Direct (Bla)

20

1 A Correct.

2 Q And this is the cover of the picture.

3 A Yes.

4 Q Of the -- of the film.

5 A Yes.

6 Q And then if we go to the second page and we see the
7 description that appears on your website of this movie, it
8 says --

9 "The redhead busy cougar in training flirts with a
10 shy, young 18-plus man, arousing the suspicion of his mean
11 stepfather. Ever resourceful, Darla uses her special sexual
12 skills to calm down step dad while keeping her target in
13 range".

14 Correct?

15 A That's correct.

16 THE COURT: Do you know -- I mean, is -- who writes
17 the copy? Who writes this material? Does the producer do that
18 or Sinclair do that or -- if you know.

19 THE WITNESS: If it's --

20 THE COURT: Don't guess.

21 THE WITNESS: If it's our film, I'm sure someone from
22 our company writes the copy. If it is a nonproprietary film, I
23 wouldn't know who put -- who writes the copy.

24 THE COURT: All right. Does your company have any
25 policy that when you use a word like young, you then put in

Wilson - Direct (Bla)

21

1 parenthesis 18-plus?

2 THE WITNESS: Not one that I'm aware of, but it
3 wouldn't surprise me, because we are very concerned with our
4 customers understanding that we do not carry any kind of
5 exploitive -- it's only adult films.

6 THE COURT: All right. Thank you.

7 BY MR. BLADUELL:

8 Q And if I can show you 126B? That is the cover of Bush --
9 Bush II?

10 A Yes, it is.

11 Q And you've seen -- you've seen this before, correct?

12 A Yes.

13 Q And then if we go to the description --

14 THE COURT: Well, this, once again, has the word
15 young (18-plus), an adorable Jessie. Is that the --

16 THE WITNESS: Yes.

17 THE COURT: All right. Well, I think you've made
18 your point. I don't know how many more of these you want to
19 show.

20 MR. BLADUELL: Okay. Well, Your Honor, at this time,
21 I will move to -- Exhibits 124, 125, 126 contain printouts of
22 all these.

23 THE COURT: All right. Any objection to their
24 admission?

25 MR. MURRAY: No objection.

Wilson - Direct (Bla)

22

1 THE COURT: They're all admitted. I just want to
2 note for the record, I mean, I think -- at least it's obvious
3 to me that some of the performers -- the pictures of the
4 performers appear to be adults clearly, but some of them are
5 very young, particularly some of the women portrayed here are
6 very young, and I just want to make that an observation for
7 future reference for me or any reviewing Court, that I think to
8 the extent the Government's theory depends on the fact that the
9 producers of these materials often use young looking women,
10 that I think that that is shown by the number of photographs
11 that are in these exhibits.

12 All right. Next question.

13 MR. BLADUELL: Thank you, Your Honor.

14 BY MR. BLADUELL:

15 Q Ms. Wilson, before the Sinclair Institute sells movies
16 from other companies, there's a review process that goes on?

17 A That's correct.

18 Q And you hire professional film reviewers to review the
19 contents of the films, correct?

20 A That's correct. Since I've been there, I know that the --
21 the external reviewer is a professional film reviewer.

22 Q For example, you've worked with a reviewer called Jay
23 Lorenz?

24 A That's correct.

25 Q And he's not a Sinclair employee, correct?

Wilson - Direct (Bla)

23

1 A No. We pay him for review. He works at different
2 universities. He's taught film, that kind of --

3 Q Now, these reviewers write a review, and they either
4 recommend you to accept or reject the film based on the
5 standards Sinclair has established regarding what it wants to
6 be associated with, correct?

7 A That is correct.

8 Q If Sinclair sells a movie, it's a movie that has been
9 accepted as meeting the standards of what Sinclair wants to be
10 associated with, correct?

11 A Yes.

12 Q Now, and for the videos that you sell from other
13 companies, you collected IDs and model releases from the
14 primary producer, correct?

15 A That's correct.

16 Q And you collected IDs and model releases for all the
17 people in the video, correct?

18 A That's correct.

19 Q Not just the people appearing on the cover?

20 A Some studios include nonsex cast members. I know Wicked
21 typically does. When they're not there, it's -- you know, I
22 sort of wouldn't know whether there are nonsex cast members or
23 not, but yes. I mean, every -- everyone who is in the film in
24 an explicit capacity is listed on the cast list, and we have
25 their IDs.

Wilson - Direct (Bla)

24

1 Q And some -- some of the companies for which you sell
2 movies provide you a password to access their computer site so
3 you can get their 2257 records?

4 A Yes. Wicked has a 2257 -- an FTP site where I can get the
5 cast lists, but the signed certificates of compliance don't
6 come to me that way.

7 Q But that makes it easier to get the records if you get
8 them directly from them, correct?

9 A Not necessarily. It depends on if the FTP site is working
10 or not. It depends on if the FTP client software is working or
11 not, how fast the download process is. Sometimes it's easier
12 if they just send us a disk in the mail.

13 Q I see. Now, if we go to exhibit number 129, please. This
14 is a cover of one of your print catalogs, correct?

15 A Correct.

16 Q And in your print catalogs, you sell movies, sexually
17 explicit films, correct?

18 A That's correct.

19 Q And other products.

20 A And other products.

21 Q And if we go to the second page of this Exhibit 129,
22 that's another page of your catalog, correct?

23 A Correct.

24 Q And you see that you have some of the movies that we've
25 seen before. For example, on the top, My Mother's Boyfriend?

Wilson - Direct (Bla)

25

1 A Yes.

2 Q Okay. Then if we go to the next -- the next page for
3 Exhibit 129A. That's another page of your catalog?

4 A Yes.

5 Q And I think 129A or 129B, that's another --

6 A Yes.

7 Q And if we go to the second page, we see references to the
8 titles, Teach Me on the lower lefthand corner --

9 A Yes, we can.

10 Q -- and Bush --

11 A Yes.

12 Q -- that we've seen? Okay. Exhibit 129C. That's another
13 of your -- of your catalogs, correct?

14 A That's correct.

15 Q And Exhibit 129D, it's another catalog from the Sinclair
16 Institute, correct?

17 A That's correct.

18 Q And if we go to the last page of this exhibit, 129D, we
19 see on the top right-hand corner that you're advertising The
20 Babysitter III.

21 A That's correct.

22 MR. BLADUELL: Your Honor, I move in to admit
23 Exhibits 129A through D.

24 THE COURT: Admitted.

25 BY MR. BLADUELL:

Wilson - Direct (Bla)

26

1 Q Ms. Wilson, yesterday on direct testimony, you referred to
2 Phil Harvey Enterprises as a sister company, correct?

3 A Yes.

4 Q And Phil Harvey Enterprises is also known as PHE. That's
5 the abbreviation, correct?

6 A That's correct.

7 Q And you also testified that Sinclair was founded by Phil
8 Harvey Enterprise employees, correct?

9 A That is right. Yes.

10 Q And Phil Harvey is the president of PHE, correct?

11 A Yes. He owns the majority of the company.

12 THE COURT: He does what? He --

13 THE WITNESS: He owns the majority --

14 THE COURT: Majority? Okay.

15 THE WITNESS: -- of the company, and he founded the
16 company in the early '70s.

17 BY MR. BLADUELL:

18 Q And you're also -- you also know Peggy Ottinger (sic)?

19 A Peggy -- Peggy Ettinger (phonetic) --

20 Q Ettinger. I'm sorry.

21 A -- was the president of Sinclair Institute up until a
22 couple years ago when she retired.

23 Q And she was a PHE employee before that?

24 A She was a PHE employee before that.

25 Q And you also -- you also are familiar with David Groves,

Wilson - Direct (Bla)

27

1 correct?

2 A Yes.

3 Q And he was -- he's a PHE employee?

4 A Yes. He's the highest ranking person on site at PHE in
5 Phil's absence. That's correct.

6 Q He's the CEO of PHE, correct?

7 A I'm not sure of his exact title. I just know that he is
8 the boss when Phil is not on the property.

9 Q Okay. Now, the Sinclair Institute has a president,
10 correct?

11 A We do.

12 Q And that president is Patrick Smith?

13 A That's correct.

14 Q And Mr. Smith reports to Phil Harvey, correct?

15 A To Phil Harvey and David Groves. Correct.

16 Q And your paycheck comes from PHE, correct?

17 A That's correct. We -- the accounting and payroll are done
18 through PHE. Yes.

19 Q Okay. So Sinclair's accounting is run by PHE?

20 A Yes. We -- the accounting office for our company is in
21 the PHE building. I'm sure there must be some arrangement with
22 them to handle our -- our accounting.

23 Q And your payroll is also run by PHE?

24 A That's correct.

25 Q And your -- your -- the processing of your orders is also

Wilson - Direct (Bla)

28

1 run by PHE?

2 A They do our fulfillment and our call center is there.

3 Yes.

4 Q And PHE owns another company called Adam & Eve, correct?

5 A Adam & Eve, yes.

6 Q And for you, PHE and Adam & Eve are basically the same
7 thing when you refer to them.

8 A I don't think that would be wrong to say. There are
9 several other flanker companies, but Adam & Eve is probably the
10 biggest one under the PHE umbrella. Yes.

11 Q Okay. Now, if we go to Exhibit 128E, please. Ms. Wilson,
12 you've seen this document before, correct?

13 A It looks like a page from the Adam & Eve website.

14 Q Okay. And if we focus on the bottom print, what's written
15 there, you see the Adam & Eve logo?

16 A Yes, I do.

17 Q And you see that it lists as the custodian of records Phil
18 Harvey from PHE?

19 A Yes.

20 Q Okay.

21 A Of the records at their building, not our building.

22 Q Okay. And you see some -- the first movie that we see
23 here, Cheerleaders 2?

24 A Yes.

25 Q That's a movie that Adam & Eve produces, correct?

Wilson - Direct (Bla)

29

1 A It -- I see the Adam & Eve logo there. Yes.

2 Q And that's a movie that you also sell on Sinclair's
3 website, correct?

4 A It is likely that we would. I'm not a hundred percent
5 sure. I'm sure if we could go to the website and look it up,
6 we might find it.

7 Q Okay. Well, let me show you Exhibit 124E. That's --

8 A That is -- that's it, Cheerleaders 2 on our website.

9 Q Okay. Now, for this film, before you sell it, you go
10 through the review process that we described before, correct?

11 A That's right.

12 Q And this movie passed the standard of what Sinclair wants
13 to be associated with, correct?

14 A That's correct. That would involve a lot of different
15 factors including the quality of the video, the consensuality
16 of the sex, the adult nature of the sex, that kind of thing.

17 Q Now, the -- you're the -- you're the person responsible
18 for 2257 compliance at Sinclair, correct?

19 A That's correct.

20 Q And the person who trained you to do this job was Gina
21 Phelps?

22 A Yes. She trained me to do the -- to use the software when
23 our company was in -- when we paid to have it programmed so
24 that we could keep our records there. She trained me to use
25 that software, and she has also helped me to understand some of

Wilson - Direct (Bla)

30

1 the nuances of the visuals that require the recordkeeping and
2 that don't -- because it's quite a nuanced sort of thing.

3 Q And Gina Phelps is a PHE employee?

4 A She is. Yes.

5 Q And the person above Gina Phelps is Chad Davis?

6 A Correct.

7 Q And he's also -- he oversees compliance for 2257 at PHE?

8 A That's correct.

9 Q And he also oversees Sinclair's compliance for 2257.

10 A I don't -- I don't -- he -- I don't really think that's --
11 he's not our custodian of records. Patrick is our custodian of
12 records, and I handle the compliance, and if I have questions,
13 I can ask -- I -- they are available as resources to me. I
14 don't know that it would be correct to say that he oversees our
15 compliance.

16 Q So when you have questions about --

17 A I don't really know what you mean by that, I think.

18 Q Okay. Let me clarify. When you have questions about 2257
19 compliance, the person that you -- you talk to are Chad
20 Davis --

21 A That's correct.

22 Q -- at PHE.

23 A That's correct.

24 Q Now, you've also testified on direct that PHE at some
25 point bought a server to store its 2257 records?

Wilson - Direct (Bla)

31

1 A That's correct.

2 Q And in this server, PHE stores the 2257 records for Adam &
3 Eve?

4 A That's correct.

5 Q And Sinclair records of 2257 are also stored in this
6 server, correct?

7 A Yes. Now they are. Yes.

8 Q And you have access to the 2257 records from Adam & Eve,
9 correct, from your computer?

10 A That's correct.

11 Q And if you want to sell a title from Adam & Eve, you would
12 go to your computer and extract the 2257 records for that
13 movie, correct?

14 A If I were asked to produce the records, I would. The --
15 Adam & Eve certifies its own 2257 records, and so if -- if we
16 carry that title, I know that the records are there, and I can
17 see them in our visual library system, because there are places
18 for the documents and it's highlighted and then the cast is
19 listed is and, you know, they -- you can't put a visual in the
20 system unless the -- all the IDs have been certified and that
21 kind of thing.

22 So when our artists go to use the images to sell one
23 of their films, basically, all the records are visible in our
24 visual library system, because, like I said, no image would
25 even be able to be loaded into the program until the records

Wilson - Direct (Bla)

32

1 are certified --

2 Q Okay.

3 A -- and we share that with them, and if we carry an Adam &
4 Eve film, that would be available to us.

5 Q And in this server, there's also 2257 documents for other
6 companies that PHE owns, correct? Like AdamMale?

7 A Yes. That -- visuals and the documents would be there as
8 well. That's correct.

9 Q And is Temptations also a company that --

10 A Temptations Parties. They're actually in our building.
11 They've moved over to our building.

12 Q Okay.

13 A And any records for any titles that they carry would --
14 would also be on that server. Yes.

15 Q Now, you've also testified about Sinclair counsel of
16 advisors during direct, correct?

17 A That's correct.

18 Q Now, this counsel is not involved in making strictly
19 production decisions about Sinclair movies, correct?

20 A That's correct.

21 Q They are -- they just serve as advisors to be -- talk in
22 your videos, correct?

23 A They're our professional colleagues who we consult if we
24 want to deal with some subject matter for people who maybe are
25 getting older and they have, you know, issues with their health

Wilson - Direct (Bla)

33

1 that interfere with their sex lives, we would go to our
2 advisory counsel perhaps to discuss the kinds of -- the needs
3 of those people, because they would best know, and we would use
4 that as advice when we create content for our video.

5 Q But the head of production of Sinclair is Kathy Brummet
6 (phonetic)?

7 A That's correct.

8 Q And she's the one who makes the decisions on productions
9 of the films, correct?

10 A Yes. Not the only person over the years, but -- but yes.

11 Q And when Phil Harvey comes to Sinclair, she some -- he
12 sometimes talks to Kathy Brummet?

13 A That's correct.

14 Q And this counsel is not involved in making any kind of
15 decisions as to the videos that Sinclair sells from other
16 companies, correct?

17 A One in 20 of Sinclair's films up until just -- just a few
18 months ago was -- one in 20 like randomly was sent to an
19 outside therapist. So in addition to the reviews that Jay
20 Lorenz does, we had a randomized system where a film would just
21 be pulled out and sent to a separate -- like a therapist for
22 review outside.

23 So in that capacity, those -- you know, those people
24 would influence whether we -- whether we use a particular film
25 or not, and if Jay has any questions about anything, he tells

Wilson - Direct (Bla)

34

1 -- he tells us in the review that this should be run by the
2 therapist is usually the way that he puts it, because he -- you
3 know, they are the ones who are the experts on what is
4 considered healthy and sex positive, and if there's any
5 question, it gets sent to a therapist.

6 Q But not -- they don't comment on every movie that you
7 sell.

8 A No.

9 Q And these counsel members are paid to appear in your
10 videos, correct?

11 A I wouldn't know anything about the financial relationship
12 between our advisory counsel and our company.

13 Q So you're not -- you're not aware that they are
14 compensated for appearing in your videos?

15 A I know that they do appear in our videos, but I don't see
16 any paychecks, and I've never discussed with anyone in my
17 company what the relationship is as far as finances go between
18 our advisory counsel and our company. I mean, you know, I
19 could guess that they're paid, but that -- it would just be a
20 guess, but they're not paid to be on our advisory counsel.
21 It's a professional relationship where, you know, we support
22 them, they support us.

23 Q So your testimony is that you don't know if they get paid
24 to appear on your videos.

25 A I don't know. I would have -- I could have guessed at one

Wilson - Direct (Bla)

35

1 point that they did, but it would have been a guess.

2 Q But you provide these counsel members gift basket -- gifts
3 -- gift baskets with your products so they can raise money in
4 their institutions, correct?

5 A Yes. We are a member of different professional
6 organizations with professional sex therapists and researchers,
7 and so like AASECT is one of them, and so we would make a gift
8 basket with our products in it and send it to their conference,
9 and they could offer that as a prize in a raffle for their
10 student members or at their luncheon or something like that.
11 That's what those things are about.

12 Q Okay. Now let's go to Exhibit number 135, please. Ms.
13 Wilson, this is Plaintiff Sinclair's answers to defendant's
14 second set of interrogatories?

15 A Yes.

16 Q You've seen this document before?

17 A Yes. It looks familiar.

18 Q You provided information to help answer these
19 interrogatories, correct?

20 A That's correct.

21 Q And if we go to interrogatory number 21, we see that it
22 asked you, "For each year since --" 1998 --

23 A 1988?

24 Q -- "1988, state the gross revenues you have received from
25 your production of visual depictions of sexually explicit

Wilson - Direct (Bla)

36

1 conduct", correct?

2 A Yes. That's what the question is. Yes. Now let's go to
3 Exhibit 133, please. Ms. Wilson, this document is titled
4 Townsend-Sinclair video sales, 2005 through 2009?

5 A Yes.

6 MR. BLADUELL: By the way, Your Honor, I want to -- I
7 forgot to move into evidence Exhibits 128 --

8 THE COURT: All right. Admitted.

9 MR. BLADUELL: -- A through C.

10 THE COURT: Admitted.

11 MR. BLADUELL: -- and I think that's the only one.

12 And --

13 THE COURT: All right. All exhibits you've used have
14 been -- will be admitted. There's --

15 MR. BLADUELL: Okay.

16 THE COURT: There's no objection. All right? So the
17 record is clear. Both counsel have an obligation to object if
18 they want to object to an exhibit. Otherwise, I'm going to
19 assume there's no objection. The witness has testified about
20 them. The exhibit -- at the end of your case, both sides, you
21 can say that you move for the admission of all exhibits that
22 were used, and I -- without objection, I'll grant it.

23 So you don't have to worry about it unless there's an
24 objection. Okay?

25 MR. BLADUELL: Okay. Thank you, Your Honor.

Wilson - Direct (Bla)/The Court

37

1 BY MR. BLADUELL:

2 Q And this -- this is the answer you provided to
3 interrogatory number 21, the gross revenues?

4 A This is -- that's from our accounting department. Yes.

5 Q Okay. And in 2005, it says that you make \$11 million?

6 THE COURT: Well, that speaks for itself. You don't
7 have to read the numbers. What's the question?

8 MR. BLADUELL: Just -- I'm just going to move to
9 admit it.

10 THE COURT: All right. Admitted.

11 MR. BLADUELL: I have no further questions at this
12 time, Your Honor.

13 THE COURT: All right. Now, I may have a couple --
14 leave that on the screen. I have a couple questions for the
15 witness. All right.

16 BY THE COURT:

17 Q Are the -- are the companies that you mentioned Adam & Eve
18 and Better Sex and Sinclair, are their sales all included in
19 this document that's now on the screen, which is Exhibit 33?

20 A No. They would not be.

21 Q They would be in addition to these, is that right?

22 A Yes. This -- these would be just Townsend.

23 Q Okay. Do you have any knowledge what the gross sales
24 would be of the other companies such as Better Sex and Adam &
25 Eve?

1 A Well, Better Sex is our website.

2 Q Okay.

3 A So that's a -- that's part of Sinclair, and --

4 Q But you -- but that's a revenue earner, isn't it?

5 A Yes. Yes. BetterSex.com is -- is a website owned by
6 Sinclair, and the revenues from that would be included in these
7 figures.

8 Q That would be included.

9 A That's correct.

10 Q Okay. What about Adam & Eve?

11 A No. Not at all, and I would have no way of knowing what
12 their sales figures are unless they announce them.

13 Q Who gets -- who owns Adam & Eve?

14 A Phil Harvey.

15 Q Okay. But now, you're the compliance officer for all
16 these companies, is that correct?

17 A No.

18 Q No?

19 A Only for Sinclair Institute, and that includes -- we are
20 Townsend Enterprises doing business as Sinclair Institute --

21 Q Right.

22 A -- and our websites are SinclairInstitute.com and
23 BetterSex.com.

24 Q Okay.

25 A Adam & Eve is a completely separate company.

1 Q You have nothing to do with Adam & Eve?

2 A Nothing at all.

3 Q Do they have a separate compliance officer, if you know?

4 A That's correct. Gina Phelps --

5 Q I see.

6 A -- who trained me to use the software.

7 Q She trained you?

8 A That's correct.

9 Q All right. But you don't have any knowledge of their
10 operations?

11 A Very little --

12 Q All right. Okay.

13 A -- as far as their revenues and that kind of thing.

14 Q Okay. All right. Now, you testified yesterday that you
15 estimated the cost of compliance with 2257, given the amount of
16 time it takes you and the other people, at approximately
17 \$75,000 --

18 A A year.

19 Q -- is that correct?

20 A Yes. Per year.

21 Q Is that a generally consistent number over the years or
22 does it vary?

23 A It's based on what the employees that are doing the work
24 are paid, and it doesn't include figures that would have to do
25 with what it costs to program the software, that kind of thing,

1 but I would say it's -- it's fairly consistent.

2 Q Okay. Now, this document here, Exhibit 33, stops at 2009.
3 Do you -- without guessing, do you have any knowledge how these
4 -- how the gross sales numbers compute for 2010, 2011, and
5 2012?

6 A Yes. They're less.

7 Q They're less?

8 A That's correct.

9 Q All right. Do you have any idea why or how much --

10 A Competition in the market.

11 Q What?

12 A How much less? Probably one, 2 million.

13 Q One what?

14 A One or 2 million.

15 Q Less?

16 A At least. Yes.

17 Q Okay. All right. And do you have any idea why without
18 guessing?

19 A I think it's attributed to probably the recession and
20 competition in the market.

21 Q Okay.

22 A That's the general consensus --

23 Q Okay.

24 A -- I think.

25 Q All right. Now, next question. Now, I'm -- I'm in no way

1 a computer software expert. I assume you have a computer
2 system that you use in your company, is that correct?

3 A Yes.

4 Q All right. Now, you spoke yesterday about the cross
5 referencing issue and about how that was a burden, is that
6 correct?

7 A That's correct.

8 Q All right. Now, I would like to just ask -- make -- try
9 and understand your testimony by asking you this question.
10 Let's say you have a male actor who is going to perform in one
11 of your videos. All right? And he gives you his driver's
12 license or whatever, and he's clearly an adult, and so we don't
13 have an issues about appearances and all, let's say he's 35
14 years old. All right?

15 A Okay.

16 Q Okay. Now, so you make a record. You photocopy his
17 driver's license, and let's say his name is John Smith, and
18 you'll open a hard copy file and you'll put a copy -- it will
19 say John Smith, and you'll put a copy of his driver's license
20 and perhaps an employment agreement, a model's release, and
21 similar legal documents in that file, is that right?

22 A That's right.

23 Q And you'll keep that in a permanent place --

24 A That's correct.

25 Q -- correct? All right. Now, I assume you'll also enter

1 the name John Smith in your computer, that you would have a
2 computer field for the names of actors, is that correct?

3 A That's right, and -- and an electronic document with a
4 copy of that ID.

5 Q Okay. Now, what I don't -- what I'm not sure I
6 understand. Let's say that John Smith then performs a scene,
7 an explicit sexual scene. Let's say he does five scenes. Now,
8 as I understand from other witnesses, those five scenes could
9 appear in one movie, in five movies, or 500 movies, is that
10 right?

11 A That is right.

12 Q And it's customary in the industry that a actor or actress
13 would -- would perform a scene, and it could be repeated and
14 spliced and copied and used multiple times, correct?

15 A That is correct.

16 Q All right. Now, what I don't -- what I don't -- what I'd
17 like to know is if you have a computer record of John Smith and
18 that he is legally qualified under 2557 and you've done all the
19 requirements, why is it a problem every time you use that --
20 any one of those five scenes with John Smith, you just can't
21 generate a computer field showing that it was move -- it was
22 used in whether it's five movies or 50 movies or 500 movies?

23 A Well, those 500 movies all have their separate documents.

24 Q Right. And they would all show that John Smith --

25 A And they all have to be filed and made available --

1 Q Well --

2 A -- and they all have to be cross --

3 Q -- but this is all a computer record. It's all done
4 electronically, isn't it? You're not creating 500 --

5 A Well, the --

6 Q Let me just finish, and I'll let you finish too. You
7 don't create paper files every time you film a new movie or you
8 -- or you advertise a movie for sale, do you?

9 A Every title that we carry, if -- if we hired John to be in
10 -- in our movie and the movie is called Loving Couples and we
11 use that footage next year in a movie called Loving Couples II,
12 new paperwork has to be created. A new scene -- every time the
13 footage gets used under a different title, new paperwork has to
14 be created.

15 Q What -- when you say paper, you're talking about a --
16 using a hard piece of paper?

17 A Yes.

18 Q What --

19 A As the primary producer, we would be required to -- to
20 create the document.

21 Q What kind of document do you create?

22 A We create a certificate of compliance with the date of
23 production and a signature of the -- a person that was on site
24 that is certifying that all of -- all of this is within 2257
25 regulations, that these proceedings were done legally according

1 to 2257 and signed. Then we would have to have a cast list and
2 we also have a scene list, and then that has to be loaded --
3 well, we used to do it all on paper, but now we're allowed to
4 load electronic documents. So I would take those documents and
5 put them on a scanner and make a PDF of them and then load them
6 into the electronic system so that I could, you know, access it
7 as opposed to walking over to a file cabinet and getting the
8 paper, but as the primary producer, the document has to be
9 created in the first place. It's not like the computer does
10 that by itself.

11 Q Well, when you create the document, don't you type it onto
12 a computer? Don't you type it onto a computer screen?

13 A Yes.

14 Q All right. And you can file it electronically, can you
15 not?

16 A That's right, but as primary producers, we keep paper
17 documents as well.

18 Q Is it your position that you have to have a paper
19 document?

20 A I am told that we have to have paper documents. We
21 keep --

22 Q So --

23 A -- paper documents as well as --

24 Q So -- go ahead. Finish your sentence.

25 A We keep paper documents as well as electronic records.

1 Only recently did -- were we told by our legal advisors that
2 electronic recordkeeping was allowed. If -- but let's pretend,
3 if we -- even if we didn't, you know, so that I can help you
4 understand what actually goes on, even if we didn't keep paper
5 records, the records have to be created, and they have to be
6 uploaded into a computer program, which is not an instantaneous
7 thing.

8 I -- if we make Loving Couples I, I put the
9 electronic documents into the computer program, and then the
10 visuals that we're going to use for Loving Couples I are all
11 loaded, and they get individual numbers. The IDs for the film
12 Loving Couples and the names of the cast members are all listed
13 there.

14 If we make Loving Couples II, that becomes another
15 record entirely where I, once again, start off with the title
16 Loving Couples II. I create the documents on the computer for
17 that film, which would include the certificate of compliance,
18 the cast list, and the scene list. Those are uploaded into the
19 slots prepared for that, and then the cast of Loving Couples II
20 is listed, and so I'm sitting there, and I type John Smith's
21 name in, and it pops up and becomes a part of the record.

22 So, you know, in the old days, I would have had to
23 make -- go to the copy machine and make a copy of John Smith,
24 and now it's done electronically, but it's not necessarily a
25 faster process. It just takes less space as far as how many

1 metal file cabinets we have in our office.

2 Q Okay.

3 A If we make Loving Couples III, the whole process begins
4 again.

5 Q Right.

6 A Brand new documents.

7 Q All right. Now, okay. So are -- is your testimony that
8 now that you've given this advice that you were allowed to have
9 electronic records, that you're no longer making an extra paper
10 set?

11 A As primary producer, we do make a paper set.

12 Q Do you believe you have to or you just do it, if you know?

13 A We are told to --

14 Q Don't guess. What?

15 A We're told to do it. I'm told to do that.

16 Q You need a paper set?

17 A Well, in order for our producer to sign the document, it
18 has to be a piece of paper.

19 Q Well, are you familiar with an electronic signature?

20 A We are. We -- I don't use them though.

21 Q But you could, could you not?

22 A Perhaps I could.

23 Q Have you looked into that?

24 A I haven't.

25 Q All right. All right. Now, the next question I have, I

1 think you were asked on direct examination. Let's say a
2 Government agent came to your office once, and just so we don't
3 have an issues, suppose they had a warrant and they wanted to
4 see what records you have of John Smith as an actor. Okay?
5 And you had done what you say you do, that every time you
6 prepare a moving, Loving Couples I, II, or III, you prepare a
7 new file for that movie and you record that a scene involving
8 John Smith is part of that movie, correct, even -- and it could
9 be the same scene in all three movies, right?

10 A That's correct.

11 Q Okay.

12 A And the visuals that we would use to market that movie in
13 our catalogue, in a flyer, in an e-mail, and on our website,
14 any of those visuals have an individual number, and that number
15 has to be cross-referenced back to all of these records so that
16 I can tell the FBI agent where that image that he has in his
17 hand has appeared in every printed piece --

18 Q But your -- yeah.

19 A -- or electronic use that we've ever created in our
20 business.

21 Q Okay. But that's exactly right, that by -- because you've
22 entered John Smith in -- as an actor in every one of those
23 movies, if the agent came with this warrant and one of the John
24 Smith records, you could then put on your screen -- you could
25 bring up on your screen a list of all the movies in which any

Queen - Direct (Mur)

48

1 scene in which John Smith was an actor was portrayed, right?

2 A That is right.

3 Q And if you wanted to, you could then print it out and give
4 it to the agent.

5 A That's correct.

6 Q If the agent wanted it electronically, you could also copy
7 what's on your screen and email it to the agent, correct?

8 A That's correct.

9 THE COURT: All right. Thank you. All right. Now
10 let's have redirect. And by the way, any time I ask questions,
11 if counsel want to object, I'm not offended. Go ahead. All
12 right.

13 MR. MURRAY: I have no -- no redirect, Your Honor.

14 THE COURT: No redirect? Okay. All right. Thank
15 you very much. You're excused. Next witness, please.

16 MR. MURRAY: Your Honor, we call plaintiff Carol
17 Queen.

18 THE COURT: Okay. Swear the witness, please.

19 THE CLERK: Raise your right hand.

20 CAROL QUEEN, PLAINTIFF'S WITNESS, SWORN

21 THE CLERK: Please be seated. Please state your full
22 name and spell your last name for the record.

23 THE WITNESS: My name is Carol Ann Queen, Q-U-E-E-N.

24 DIRECT EXAMINATION

25 BY MR. MURRAY:

Queen - Direct (Mur)

49

1 Q All right. And, Ms. Queen, state your residence, city.

2 A I live in San Francisco, California.

3 Q Okay. And what is your current profession?

4 A I'm a sexologist. I have two main roles in this. I'm the
5 director of the Center for Sex and Culture, and as an adjunct
6 to that, I do lecturing and -- and writing, and I'm also the
7 staff sexologist at Good Vibrations in the Bay area and have
8 been there under many job titles, but sexologist is my most
9 recent and current one.

10 Q What is a sexologist, by the way?

11 A A sexologist is a person who academically studies
12 sexuality. So I have a Ph.D. in sexology, and my work includes
13 academic as well as more popular work.

14 Q Okay. And what -- tell me what the company, Good
15 Vibrations is.

16 A Good Vibrations is a sex toy, book, video, and product
17 company originally founded by one of the sex therapists in the
18 1970s. It was initially to be a company that women could feel
19 comfortable shopping in and was an all women's company for
20 quite a long time.

21 Q And does it have retail stores?

22 A It has I believe six retail stores at this point.

23 Q And does it also have a website?

24 A There's a website, goodvibes.com.

25 Q Okay.

Queen - Direct (Mur)

50

1 THE COURT: What's it called?

2 THE WITNESS: Goodvibes.com.

3 BY MR. MURRAY:

4 Q Now, are you also associated with some museum there?

5 A The Good Vibrations Antique Vibrator Museum is a stand
6 alone room in the Polk Street Good Vibrations in San Francisco,
7 and it contains roughly a hundred vibrators ranging from the
8 late 1890s, we think, to the early 1970s.

9 Q And what is your role in connection with those?

10 A I'm the curator of the Antique Vibrator Museum, and I
11 represent it and larger Good Vibrations to the public and the
12 press.

13 Q And then you mentioned the Center for Sex and Culture?

14 A Right.

15 Q And what is that?

16 A That is a nonprofit in San Francisco that I co-founded
17 with my partner. It is a library, archive, gallery, sex
18 education, and cultural events center.

19 Q Okay. And when was that founded?

20 A That was founded in about 1990. 2000. I'm so sorry.

21 Q Okay. Now, you mentioned your Ph.D. in sexology. What --
22 what is your undergraduate education?

23 A I have a Bachelor of Science in sociology -- pardon me --
24 and a year of graduate school in sociology as well --

25 Q And --

Queen - Direct (Mur)

51

1 A -- which I then transferred over to sexology.

2 Q Where did you achieve your Bachelors degree?

3 A Bachelors is from University of Oregon, as is that one
4 year of graduate school.

5 Q Okay. Now, and how old are you, if I might ask?

6 A Fifty-five.

7 Q Okay. Now, have you authored any publications on the
8 subject of human sexuality?

9 A I have. I have 13 authored or edited books in print, 12
10 or 13. There's two editions of one of them, and I have a
11 number of stories, essays, and related kinds of writings and
12 anthologies. At last count, there were about 75 or 80 of
13 those, and also journal and magazine articles. I'm not sure
14 how many of those I have published.

15 Q And have any of them been published in peer review
16 journals?

17 A Yes. A couple of them have.

18 Q What journals?

19 A I believe one of them is called Journal of Women and
20 Sexuality, and also, there is Journal of Bisexuality, which I
21 believe to be peer reviewed.

22 Q And have any of your publications been translated into
23 other languages?

24 A I have had some of the books and I'm not sure how many of
25 the -- the essays and stories published in other countries. I

Queen - Direct (Mur)

52

1 know at least that there is one in Dutch, and I know there's
2 one in Chinese.

3 Q Okay. And tell the Court what some of the books are that
4 you've authored or compiled.

5 A My first book was called Exhibitionism for the Shy and was
6 a sexual self-help book for people who felt as though they
7 wanted to be more comfortable in their sexuality. My next one
8 was called Real Live Nude Girl, Chronicles of Sex-Positive
9 Culture, and that's a series of personal essays and commentary
10 about sexuality and the sexuality communities. My third book
11 was called The Leather Daddy and the Femme. It's a novel, and
12 then I have published as an editor a -- or co-editor a book
13 called PoMo Sexuals, which is personal essays by people who
14 don't feel as though they belong on either end of the gender or
15 sexual orientation spectrum. So nonbinary ways of people
16 thinking about themselves and living in the world, and in
17 addition, a couple of volumes of Best by Sexual Erotica II
18 called Five Minute Erotica and More Five Minute Erotica, very
19 short erotic stories, one called Whipped, which was about
20 female dominance, and I'm trying to think if there's been
21 anything else.

22 Q Now, are any of these books taught at universities?

23 A PoMo Sexuals is on the syllabus at some universities,
24 particularly in gender studies and sexuality studies kinds of
25 programs, as is, in some cases, Real Live Nude Girl.

Queen - Direct (Mur)

53

1 Q Now, have you yourself performed in sex education films?

2 A I have had two roles in sex education films, one as a
3 performer showing people how the explicit acts are done, and
4 one as a talking head or explaining role. So I've had both of
5 those kinds of responsibilities.

6 Q And approximately how many of those films have you
7 participated in as a performer as opposed to a talking head?

8 A As a performer as opposed to a talking head, over a half
9 dozen. As a talking head, probably another four or five.

10 Q And how old were you when you first appeared in such a
11 film?

12 A My first film was in 1988. It was Latex and Lace, a
13 women's safer sex video, and I was 29.

14 Q Okay. And what was the age range of the other performers
15 in the various films that you've participated?

16 A In that case, I believe that I was the youngest person in
17 the film. The age range in the other films I've been involved
18 with has been over 18, although I don't know the exact age of
19 the performers younger than me, all the way up to about 60, I
20 think.

21 Q Okay. And what is the age range of the majority?

22 A The age range of the majority, both in -- in terms of me
23 and the time period in which I was performing and also the
24 people -- my peers in the movies, generally in their 30s.

25 Q Okay. When you would participate in these films, did you

Queen - Direct (Mur)

54

1 have to provide photo IDs?

2 A Yes.

3 Q Okay. Did you do any of these films for Sinclair
4 Institute, by the way?

5 A I think that I am in one to four of Sinclair Institute's
6 movies, although I'm not sure of the number. I know I did two
7 shoots with them, and there may be more than -- more than the
8 two movies, that -- as Diane just described.

9 Q Now, and over what period of time? You said the first one
10 was 1988. Of all of the films that you've participated in
11 either as a perform or as an educator, what is the range of
12 years? '88 to what?

13 A 1988, and I believe the last one was 2011.

14 Q Okay. Now, do you also as part of your professional
15 activities do something that is referred to "collage art"?

16 A I am a collage artist. It's a sideline, but I do do --
17 make art and out of other images.

18 Q Well, let's --

19 A So bringing them together.

20 Q Yeah. Why don't you give the Court -- let's talk about
21 what is the definition of collage art?

22 A Okay. Collage is -- is materials that have been taken
23 from other sources, usually -- in my case, I use paper mostly,
24 paper, scissors, and glue, putting the images that you find
25 together in a new way, and in my particular case, I will use

Queen - Direct (Mur)

55

1 often explicit images or nudes and reinterpret them and make a
2 new piece of art out of the images that I have collected
3 together.

4 Q Okay. Is another name for that type of art
5 appropriationist art?

6 A My understanding is that that's one of the ways it's
7 referred. Yes.

8 Q And is this collage art or appropriationist art a
9 recognized genre in art?

10 A It is a recognized genre. It's -- it's history and best
11 -- it's best understood by academics as being something that
12 was in the dadaist or surrealist line of -- of art, history
13 from the early part of the 20th century onward.

14 Q Okay. And have you ever displayed or shown these collage
15 artworks that you've --

16 A I have. I've had a half a dozen gallery shows or other
17 kinds of public shows of a few all the way to most of my
18 artworks.

19 Q And how many of these do you create approximately a year?

20 A It depends on the year. In some cases, there will be as
21 many as a half dozen, even maybe more, but ordinarily, I do at
22 least one or two a year. It depends upon the amount of time
23 that I have to go and make art. It's not something that I can
24 do every day. It has to be in a particular time frame.

25 Q And you mentioned that some of them are explicit. Are you

Queen - Direct (Mur)

56

1 referring to sexually explicit?

2 A I am.

3 Q So --

4 A I use genitals and nude bodies in some of the pieces that
5 I do.

6 Q Okay. Now, you're familiar with 2257, are you not?

7 A I am familiar with it. Yes.

8 Q Now, when you create this collage art, you are making a
9 production, correct?

10 A I'm making a visual depiction, yeah. A piece of art.

11 Q Now, how -- if you include sexual images that you have
12 collected from other sources, how would you go about complying
13 with 2257?

14 A Well, that's actually a matter of concern. I really
15 can't. I can sometimes determine what the date of publication
16 is of the work that I'm cutting out or tearing out of another
17 magazine or something like that to make a new piece of art. I
18 have no clue if I were even to reach out to those people saying
19 that I needed to see their 2257s, whether they would allow me
20 to do it. It's part of -- it's actually a concern of mine that
21 doesn't stop me from making the art but has stopped me from
22 publishing it actually.

23 Q Well, how would you go about -- so if I understand, you
24 collect these sexual images from what types of sources?

25 A They could be from porn magazines. There's a book of

Queen - Direct (Mur)

57

1 images of women's vulvas that I use and take images of the
2 vulvas out of that. I'm looking for a comparable book about
3 penises, and I haven't found one, but I would use it if I had,
4 and I make art pieces that have some cultural commentary
5 associated with them I think would be safe to say.

6 Q And how would you begin to collect photo IDs from the
7 people depicted in those images?

8 A Well, unless there were a way for me to determine who the
9 person was in the image, which sometimes I can do. Sometimes I
10 recognize a person in a porn magazine say, but not always, or
11 unless there were a way for the publisher that makes the book
12 of vulvas to share their information with me, if they even have
13 it. I don't actually know whether they have it, whether they
14 have such IDs. I don't -- I don't know how I would begin to do
15 that. If I knew who a performer was, I could I suppose reach
16 out them and send them an e-mail, but other than that, I just
17 don't know.

18 Q So when you create this collage art, you don't have any
19 2257 records associated with it?

20 A I do not. I never have, and I can't imagine how I could
21 reliably get them.

22 Q And do you place the 2257 label on the work then?

23 A No. No. I couldn't do that.

24 Q And what has that -- how has that affected your collage
25 art?

Queen - Direct (Mur)

58

1 A Well, in terms of the making of the art and the -- the
2 sharing it with people as -- as a piece of art, showing it to
3 -- showing a piece of art to a person, that has not stopped me
4 from doing either of those things. I would like to publish
5 these into a book, and I'm just very concerned. I haven't
6 taken any steps to do this largely because of this issue that
7 we're discussing.

8 Q Okay. Now, by the way, have you ever been a member of the
9 Free Speech Coalition?

10 A I have been a member of the Free Speech Coalition. If I
11 remember to send in my -- my annual re-up, I am a member now,
12 but I am not sure, but I have been in the past on more than one
13 occasion.

14 Q And have you ever been on their board of directors?

15 A I served on their board of directors in the mid/late '90s.
16 I believe the year was 1997, although I am not positive about
17 that, for one year.

18 Q Now, could you describe the work you do at Good Vibrations
19 with -- in a little bit more detail? What exactly are your
20 duties?

21 A My duties at Good Vibrations are to oversee and conduct
22 trainings of staff members, very specifically the people who
23 will do customer service who -- whose job it is to go up to a
24 person in a store or answer a phone in the customer service
25 center and say hello, can I help you, what are you looking for

Queen - Direct (Mur)

59

1 and that kind of thing, so that they can understand sexuality,
2 talk about it comfortably, make an informed and comfortable
3 environment for the shopper. So that's one.

4 Another piece of my work is to represent the company
5 and sexuality in general to the public and the press, which
6 means that say Men's Health and Cosmo will contact me one week.
7 I fully expect to be asked questions about human papilloma
8 virus this week. That's what I'll probably be doing in my
9 e-mail this week as part of that work.

10 Q All right.

11 A And I represent the Antique Vibrator Museum, as I've told
12 you, and I have a subtitle that I am company historian, and
13 that basically means that I've been around longer than anyone
14 else in the company, and if anyone needs to know something
15 about the past history of the company, which is significant and
16 interesting in many ways, then I'm the go-to person for those
17 questions.

18 Q Now, the Center for Sex and Culture is separate from Good
19 Vibrations?

20 A That's correct.

21 Q And where is that located again?

22 A That's in San Francisco as well.

23 Q Okay. And that's the nonprofit that you talked about?

24 A That's correct.

25 Q Okay. And I think -- did I ask you -- and if I didn't --

Queen - Direct (Mur)

60

1 and if I did, I apologize -- does it maintain a library?

2 A The Center for Sex and Culture has a library. That's
3 right. That's one of our --

4 Q And what's in your library there?

5 A We've got -- I think we've got about 7,000 volumes on the
6 wall right now. We've got some more in storage, and we collect
7 everything from academic works including some of the
8 foundational texts of sexology like the Kinsey Reports and
9 things even further back than that, contemporary academic
10 things like the Journal of Sex Research and other academic
11 works. We don't have any subscriptions to anything, but we get
12 a lot of donations, some medical sexology journals, things like
13 that, as well as pop culture works, how to have better sex in
14 various ways by various authors over various decades.

15 Q Does your library include sexually explicit materials?

16 A It does. Sexually explicit material both in terms of art,
17 photography, and that sort of thing as well as porn magazines.
18 We've got a collection of videos and DVDs, although those are
19 not available right now. They're in storage.

20 Q Now, do you maintain a -- an art type gallery as well as
21 the center?

22 A One of the walls of our large room, one -- one has books
23 on it, and the other wall is an art gallery which changes out
24 once a month or every two months. Depends. Usually, it's a
25 single artist or two artists together being displayed. Once or

Queen - Direct (Mur)

61

1 twice a year, we have group shows that have as many as probably
2 30 artists I would guess at the most.

3 Q And are -- and are any of the -- the works in the gallery
4 sexually explicit?

5 A They are often, although not always, sexually explicit.
6 Sometimes we have photographs, sometimes paintings or other
7 kinds of created art, and sometimes even collage.

8 Q And do you offer any sexual education classes at the
9 center?

10 A We do. We have sex ed. classes arranging from very
11 didactic and lecture based to experiential couple based, here,
12 try this out, folks kinds of classes for people, adults of
13 every orientation and interest that we can find resources for.
14 It's part of the point of the sex and culture to be as broad in
15 our understanding of sexuality as we can.

16 Q Now, are you at the center involved in something that is
17 called the Masturbatathon?

18 A Yes.

19 THE COURT: Master -- sorry?

20 MR. MURRAY: Masturbatathon.

21 THE COURT: Yes. Okay.

22 BY MR. MURRAY:

23 Q And would you tell the Court how that came about?

24 A Sure. The Masturbatathon originally was part of Good
25 Vibrations National Masturbation Month, which was created in

Queen - Direct (Mur)

62

1 1995 by a group of people within -- I was one of them -- and PR
2 people and so forth to protest the firing of Surgeon General
3 Joycelyn Elders for having said one thing about masturbation,
4 one we thought sensible thing about masturbation, and we
5 thought that it was shocking that such a thing could occur,
6 that people obviously needed to be more comfortable about this
7 topic, and we thought we could help them do that by talking
8 about masturbation to the press, to the public in this playful
9 yet serious way called the National Masturbation Month, which
10 is still being celebrated.

11 And a couple of years later, we added the
12 Masturbatathon. The Masturbatathon was both a consciousness
13 raising thing and an attention getter for the press for the
14 whole purpose of Masturbation Month, and it is, just like a
15 walkathon, you would ask appropriate people in your life
16 whether they would sponsor you to do a charity fundraising
17 event, except instead of walking or biking, in this case, it's
18 masturbating, and you come back to your friend later and say I
19 had 12 orgasms or I masturbated for two hours or whatever it
20 might have been, and the point of the Masturbatathon was
21 specifically to get people to speak about masturbation to one
22 another in a way that was not overly sexualized and also to
23 normalize the practice and to talk to the press about this,
24 because the press liked this idea a lot, and --

25 Q Where did you hold these?

Queen - Direct (Mur)

63

1 A We held them nowhere really. They were private events. A
2 person would ask their friends. They would have a pledge
3 sheet. They would fill it out. They would go home and
4 masturbate if that's where they generally masturbated, and then
5 they would contact their friends again, collect their pledges,
6 remit them, and what Good Vibrations did with the money is send
7 a hundred percent of it on out to charities that we chose. So
8 when people asked about it, people would say and, by the way,
9 this charity this year is the Boston Women's Health Collective
10 or whatever it was, and then that would happen and then it
11 would be over for the year, and we would do it again the
12 following May. When this --

13 Q What -- let me just interrupt.

14 A So.

15 Q So then --

16 A I'm so sorry.

17 Q Then when -- when did it occur that the center became
18 involved in it?

19 A The Center for Sex and Culture started doing these -- I
20 think the first one was in May 2001, and we found a venue. We
21 didn't have our own venue yet as a center. We had just been
22 created, but we found a venue. We rented it. We announced we
23 were going to do a live Masturbatathon as opposed to the -- the
24 private kind that had been already going on, and people who
25 wanted to go to the Masturbatathon could come to the group

Queen - Direct (Mur)

64

1 space so that it had a sort of a sex club environment, but
2 there was no interaction or intercourse between the
3 participants. It was all masturbation.

4 Q And how many of these have you held over the years
5 approximately?

6 A We have not held one every single year since that time,
7 but most years. I think we've held about 11 of them.

8 Q And were any of them put up on the internet in a form of
9 live stream?

10 A A handful of them were live stream. I'm going to say
11 about five of them, I believe, or six of the total number, and
12 we didn't always have a venue that was appropriate to live
13 stream. So we haven't done all of them. It took a while to
14 get the group of people together who were our crew, but the
15 same crew was our live stream and crew each time.

16 Q And so on those occasions when you would live stream the
17 event, did that trigger, as far as the center was concerned,
18 2257?

19 A As far as we were concerned, live streaming, even though
20 we weren't publishing it permanently, called us -- called upon
21 us to have to do 2257 compliance, and as a small community-
22 based nonprofit that's all volunteer, we did what we could to
23 make compliance happen, copying IDs, getting 2257 releases, and
24 so forth.

25 Q Okay. Now, let's talk about the ones then that were live

Queen - Direct (Mur)

65

1 streamed. Take us through one of those sessions and describe
2 them, the ones that were live streamed.

3 A So depending on the day, we would have the -- the crew
4 come in and set up whatever they needed to -- to live stream.
5 I'm not a technical person. So I will -- I will do this on a
6 lay level explanation. The computer that it would be streamed
7 through would be connected up with the cameras, and we would
8 set up one -- generally, it was a space that had three rooms.
9 So one room would be set up as the place where people who
10 wanted to go to live screaming could go.

11 No one else got to go into that room unless they had
12 filled out the correct paperwork and given us their ID. So
13 people who didn't choose to be on camera initially couldn't
14 wander in there and couldn't get on camera accidentally. We
15 were -- we had guards at the door, and people had wrist bands
16 on of different colors so we could tell who was who.

17 Another room would have had people in it who didn't
18 want to be on live camera and didn't want to have the chance of
19 stumbling into the wrong room. It was a private room. There
20 were no cameras at all there, and -- because some people wanted
21 to be private and public at the same time, if that makes sense.

22 And the final room was a room where both the
23 refreshments were and where I held what was sort of a talk
24 show. I interviewed participants at the Masturbatathon for the
25 -- for the live stream. So this was also a camera equipped

Queen - Direct (Mur)

66

1 room. I interviewed participants. I talked about
2 masturbation. I would interview special guests, if we had any.
3 Sometimes there would be authors or film performers. One of
4 our special guests one time was Nina Hartley, who I know is
5 part of this proceeding.

6 And so I would talk about masturbation, describe what
7 was going on in the rooms if nobody was on film at the time,
8 because people could opt in and opt out. So there wasn't
9 always masturbation for the people in web land to look at. So
10 instead, we would talk about it during that time. So there
11 would be a full day or a full session of the stream, but it
12 wouldn't always be explicit. Sometimes it would be explicit.
13 Sometimes it would be me talking.

14 Q And what was the process for checking the IDs as people
15 came in?

16 A Our most trusted volunteer would be at the entryway. You
17 couldn't get into the space. It was actually at the top of a
18 flight of stairs. So people would be ranged down the stairs
19 waiting to -- to check in. They would have to show their ID,
20 sign a release saying they knew they were coming into a
21 sexually related environment, and then if they wished to be
22 part of the live stream, we would send them to the next desk
23 with the next trusted volunteer who would take a photocopy or
24 scan of -- or digital picture in some cases, digital camera
25 picture, of their ID, give them the 2257 associated form to

Queen - Direct (Mur)

67

1 fill out that -- that had that language on it, and that
2 included, among other things, their aliases, other names.

3 That was sometimes a point of confusion, because
4 ordinarily when people fill out this -- these forms, they're
5 people in the adult entertainment industry who -- who know what
6 all of their different names that they may have used have been.
7 People from the sexuality community or people who are just
8 curious about this don't necessarily know about that. So we
9 had people filling them out with married names and nonmarried
10 names and different things like that.

11 We did our best to respond to the law as we
12 understood it, and then once somebody had given us that
13 material, they could get the band that allowed them to go into
14 the room where the cameras were.

15 Q And how many participants generally speaking would you
16 have when you would live stream it?

17 A At the height of the live streamed Masturbatathon, we
18 think -- I think we had 200 people in the room, but not all of
19 those people wanted to be part of the public live stream. So I
20 think the height there was 50 to 70.

21 Q And what was the age range of the people who participated
22 in these Masturbatathons?

23 A The age range was 18 or over through the 20s, 30s, 40s,
24 and 50s, into the 60s. I think there may have been one
25 participant in his 70s.

Queen - Direct (Mur)

68

1 Q And what was the age range of the vast majority of the
2 participants?

3 A The vast majority of the people were in their 30s and 40s.

4 Q And what percentage would you estimate was under the age
5 of 25 that participated?

6 A My best estimate is 10 to 12 percent.

7 Q Okay. Was there anybody who participated in the
8 Masturbatathons who you observed who could conceivably be
9 confused as being a minor?

10 A When people are around 20 years old, it can be hard to
11 tell visually whether someone is under 18 or over 20. That's
12 generally not the case, but it can be the case. I didn't see
13 anyone who flagged my concern in that way, but that question --
14 not your question is irrelevant, but that was irrelevant at the
15 Masturbatathon, because we carded all the people who walked in
16 including the guy who was over 70.

17 Q With respect to all the people, the vast majority, the 90
18 percent or so I think you said that were over 25, was there any
19 way that any of them could be confused as being younger than
20 18?

21 A I don't believe so, but we checked all of their ID
22 regardless.

23 Q Okay. Now, so the live streaming of this event would go
24 up on the internet, is that correct?

25 A Right.

Queen - Direct (Mur)

69

1 Q And how would people access it?

2 A People would have heard about it either through the press
3 ahead of time or through our list and website, and we would
4 have at that point put a code or a click through button where
5 people would be able to go and get the -- it's -- it's like you
6 -- you look at YouTube now on a computer screen. There would
7 be a screen that would pop up. We didn't do it through YouTube
8 I should say, but -- but somebody in the group of people who
9 knew a lot more than I do about technical things knew how to
10 make that occur.

11 It didn't always work properly. There were times
12 when -- and I was the person there going and checking e-mail
13 from time to time to see if anything was -- was problematic.
14 There was at least one year when half of the life stream didn't
15 even work, but we tried.

16 Q And did you make a permanent recording of it? Did you
17 make a copy of the live streaming?

18 A The reason that we would do a live stream rather than
19 filming the Masturbatathon specifically had to do with our
20 concerns about 2257 and how we may not be a large enough entity
21 to properly keep the paperwork. We do keep that paperwork from
22 the live streams, but we haven't -- we didn't -- we chose not
23 to make a permanent record ourselves or to potentially utilize
24 it further in ways because of this concern.

25 Q Well, were you aware of the requirement of the law that at

Queen - Direct (Mur)

70

1 least some copy of the image be made to be put with the
2 records?

3 A We were not aware of that requirement of the law.

4 Q Okay. So you didn't do it?

5 A Didn't do it.

6 Q Okay. Now, were you able to -- were you aware of the
7 requirement of putting a label on the -- on the image that
8 would explain where the 2257 records were kept?

9 A I announced that on the live stream. That's how -- that's
10 how we did that.

11 Q Well, hold on. Were you aware that a label was required?

12 A I wasn't aware in terms of a live stream.

13 Q Okay.

14 A I certainly was aware that if you kept -- if you made a
15 video, that it was required to be language on the video, on the
16 -- on the box label as well, and part of the problem with our
17 thinking this through was that there's supposed to be a
18 permanent address of records, but we've had four locations in
19 the last ten, 12 years. And so I didn't understand how there
20 would be a way for us to do that, because we're not at the same
21 location all the time.

22 Q So did you put a label up on the live webcast or written
23 announcement of where the 2557 --

24 A Not a written announcement. A verbal announcement.

25 Q Well, tell me how you did that.

Queen - Direct (Mur)

71

1 A I stood there in front of the camera and explained that we
2 were -- we were complying with 2257 to the best of our ability,
3 and the way we were doing it was by taking IDs and getting --
4 everyone here is over 18 and we are signing releases and we
5 have them here.

6 Q Now, given your experience with the live streaming of the
7 Masturbatathons, when is the last time you live streamed one?

8 A I believe our last live stream was 2010.

9 Q Okay. And would you like to do another live stream
10 Masturbatathon in the future?

11 A I would like to do another live stream. We always get
12 complaints when we don't do them. There were our -- I guess
13 our handful of fans out there who miss the opportunity to do
14 that, but we have two problems at the moment. One of them is
15 that the current room isn't large enough to successfully
16 separate an on-camera area and an off-camera area. We care
17 very much about the privacy of the people who don't want to be
18 on camera, and so the room just doesn't really lend itself to
19 it, and we also are concerned about the 2257 question and
20 increasingly so the more we find out about it.

21 Q Okay. So are you saying that if in the future you can
22 locate a suitable room, would you allow the 2257 concern to
23 prevent you from having it?

24 A We would need to do I feel more research and gain more
25 information than we have in the past in order to see how we

Queen - Direct (Mur)

72

1 could successfully comply.

2 Q Now, do you also have a -- a photo club at the center of
3 some kind?

4 A Yes, we do. It's not active at the moment, although we
5 could activate it again in the future, and I imagine that we
6 will, and it was active at the center from about 2005 or '06, I
7 believe, and often on, and I believe our last meeting was last
8 summer.

9 Q And what was the photo club?

10 A The photo club was a group of new photographers or new
11 erotic photographers -- some of them were experienced
12 photographers -- who wanted to branch into erotic content in
13 the work that they did, and they would join the club and come
14 to monthly -- usually monthly -- meetings held by more
15 experienced photographers, particularly, more experienced
16 erotic photographers who would teach them a class focusing
17 generally on whatever the erotic photographer's specialty was.
18 One person was really good at lighting. One person was very
19 good with working with models or posing them, different things,
20 and then there would be an erotic photo shoot as part of the
21 club.

22 And then models would be brought in to be the
23 participants in a shoot, although they wouldn't photograph each
24 other. It would be models that -- that agreed to be in the
25 shoot. Those models, of course, filled out 2257 paperwork,

Queen - Direct (Mur)

73

1 which we also retain, and the photographers had to sign a
2 release with us saying that unless they themselves got 2257
3 releases from the models in question, that they were not to
4 publish any of the pictures they took at that time. They could
5 also make side arrangements to hire the models themselves if
6 they wished, but we talked to the -- to the photographers from
7 the get-go about 2257 releases, and most of them had never
8 heard of these releases, had no idea that there was a level of
9 paperwork that was required beyond just checking an ID.

10 Q And were some of these photo shoots involving nudity and
11 explicit sex?

12 A Oh, yeah. All -- all of them had at least partial nudity,
13 if not full nudity. Some of them had explicit sex from solo
14 sex and masturbation to toy use to couple. There's -- there
15 are a couple of pairs of models in the bay area who are life
16 partners who will also do modeling together for such things.
17 So a couple would come in and go through whatever kind of
18 sexual response they wanted to to get the photographers
19 comfortable with working with live people moving around and --
20 and actually having sex.

21 Q And does the center maintain a collection of some of those
22 photos?

23 A The center doesn't -- the center actually owns a couple of
24 the photos that we acquired from a couple of the photographers
25 that we either did not have any explicit content to them or

Queen - Direct (Mur)

74

1 that we knew had been 2257 as part of our art collection that
2 we hold, part of our archive really, but we don't have any --
3 we don't have the full range of those materials. Those are
4 owned by the photographers, and we don't do anything with them
5 at present that would look like a publication, again, for the
6 same reason that we are a small entity without a paid person to
7 be in charge of all of this material, all the 2257 releases and
8 so forth. We would, for example, like to do an erotic photo
9 club calendar say as a fundraiser, but we're just concerned
10 about this. So we haven't chosen to do it.

11 Q When you say this, you're concerned about what that has
12 presented you from doing it?

13 A I'm sorry. That was unclear. We're concerned about --
14 about our being able to fully comply with 2257 legal
15 requirements, and having a product like that out in the world
16 would we feel be another level of publication that we're just
17 concerned about.

18 Q Okay. Are you saying you're unwilling to take the risk?

19 A Yes. For the time being, it seems too risky a thing to
20 do --

21 Q Now --

22 A -- particularly because it's -- it would be in the name of
23 the center, and we all have a duty of care, because it's our
24 nonprofit.

25 Q Now, you mentioned the press. Does the press show up at

Queen - Direct (Mur)

75

1 any of the Masturbatathons that were live streamed?

2 A We have had press at the Masturbatathons more than once.
3 I'm sure that at least -- at least one or two members of the
4 press were present at each one. In a couple of cases, there
5 were more than that, but -- but a small number of press members
6 attend.

7 Q And did you --

8 A Some --

9 Q I'm sorry.

10 A I'm so sorry. Sometimes there -- sometimes there isn't
11 any -- anything but a writer or blogger going into the room to
12 experience it, and then they make a written representation of
13 it later, but sometimes there are people who want to bring in
14 photographers or videographers.

15 Q And when that happens, do you explain to the press
16 anything about the requirements of 2257?

17 A Yes. I tell them that they need to make sure that they
18 bring along releases that will be 2257 compliant and that
19 they're going to be responsible as press members who are going
20 to publish any images outside of our control to -- to be
21 compliant with that, and most of the members of the press don't
22 know what 2257 is. They need to be explained that there's a
23 special law having to do with a particular kind of image. They
24 need to go and sometimes check legal if they have a large
25 enough publication that has a legal department.

Queen - Direct (Mur)

76

1 In my experience, they have told me in some cases at
2 least that legal didn't know about it. So they have to do some
3 research, and then the people who wind up showing up need to
4 show us that they have a 2257 release with them or else they
5 need to tell us at the door that they're not going to do any
6 explicit photography.

7 Q And --

8 A I'm not positive whether they've all complied with that,
9 but we ask them to state that to us.

10 Q And have any of them succeeded then in taking photos --

11 A It's --

12 Q -- under those conditions?

13 A It's my knowledge of at least one appearance of images
14 from a Masturbatathon in the press. It was in San Francisco
15 Weekly. There may have been more than I'm not familiar with,
16 but I do know about that one.

17 Q And were there members of the press who, upon being
18 advised of 2257, elected not to participate?

19 A There certainly have been members of the press who elected
20 not to bring a photographer or a videographer when I've told
21 them about this regulation, and I think there may have been
22 members of the press who just had their editor say oh, never
23 mind.

24 MR. MURRAY: Okay. Thank you very much. I have
25 nothing further, Your Honor.

Queen - Cross (Swi)

77

1 THE WITNESS: You're quite welcome. Thank you.

2 THE COURT: Okay. All right. Cross-examine.

3 CROSS-EXAMINATION

4 BY MR. SWINTON:

5 Q Good morning, Ms. Cross (sic).

6 A Good morning.

7 Q I mean Ms. Queen.

8 A That's okay.

9 Q On direct examination, you went into length and discussed
10 one of the events that you hold at the master -- at the Center
11 for Sex and Culture, which is the Masturbatathon.

12 A Right.

13 Q While it hasn't been an annual event, it's occurred I
14 think you said about 11 times since 2001?

15 A Roughly that. Yeah.

16 Q And you held one this year, 2013, in May.

17 A That's correct.

18 Q And one of the aspects of the Masturbatathon is that
19 sexual intercourse is strictly forbidden at a Masturbatathon.

20 A That's correct.

21 Q You had some discussion on direct examination that those
22 -- that a certain number of Masturbatathons were live stream to
23 the internet.

24 A That's right.

25 Q And you discussed that in order to accommodate the live

Queen - Cross (Swi)

78

1 streaming, you really needed two separate rooms.

2 A Yes.

3 Q One for those who wanted to be on the live stream and
4 appear on the internet --

5 A Right.

6 Q -- and one for those who wanted to participate but not be
7 on the internet.

8 A Right.

9 Q Now, the internet broadcast of any of these
10 Masturbatathons was contemplated to simply be a one-time event.

11 A That's correct.

12 Q And neither you nor the center recorded it so that it
13 could be shown at a later time.

14 A To my knowledge.

15 Q And to your knowledge, it has never been re -- none of the
16 Masturbatathons that appeared on the internet have been
17 rebroadcast.

18 A To my knowledge.

19 Q And, in fact, you've sort of described this live
20 broadcast, the purpose of it as being effervescent.

21 A Yes. That's a word I used.

22 Q There really was no intent by you or the center to
23 permanently capture the likenesses of any of the participants
24 at the Masturbatathon.

25 A That's right except in -- in the case that -- that the IDs

Queen - Cross (Swi)

79

1 were photographed or -- or scanned.

2 Q Right. And you discussed that sometimes people come to
3 take pictures at the -- at the Masturbatathon, for example, the
4 media.

5 A Right.

6 Q And -- but neither you nor the center have copies of
7 pictures that were taken at the Masturbatathon.

8 A At this point, I have copies of pictures in the deposition
9 material that was returned to me by the attorneys, because you
10 had brought them to our deposition, but other than that, I
11 don't have any copies of those items, and I don't believe that
12 they're kept by anyone at the center.

13 Q And you've never posted any of these pictures, any picture
14 of the Masturbatathon, either yourself or on the center
15 website.

16 A I actually can't tell you for sure whether anyone has
17 posted anything on the center website. I'm not familiar with
18 the entirety of that website. It's done by volunteers. I know
19 that I have not done that myself, and I don't know for a fact
20 that anyone has.

21 Q And as far as participants for the Masturbatathon, you
22 would allow an 18-year-old to attend and participate in a
23 Masturbatathon if they presented appropriate identification.

24 A If they presented ID and they understood they were coming
25 into a sexual environment. We'd make sure they knew that they

Queen - Cross (Swi)

80

1 were entering such an environment.

2 Q And you discussed part of the process of checking IDs on
3 direct examination.

4 A That's right.

5 Q And you said you would use volunteers to do that process?

6 A Our trusted volunteers.

7 Q And the actual process of checking just the individual ID
8 you've described as taking less than a minute.

9 A Checking the ID, less than a minute. Working -- coming in
10 and having the ID scanned and filling out paperwork would take
11 longer than that.

12 Q Right. And for the people who -- for the years that you
13 live streamed it, you got model releases for the people who
14 wanted to be on that internet broadcast.

15 A That's correct.

16 Q Now, you check IDs at the Masturbatathon every year
17 regardless of whether it appears on the internet.

18 A That's generally the practice. Yeah.

19 Q Yeah. And you would check IDs for a Masturbatathon even
20 without the requirements of 2257.

21 A Because it's a sexually-related environment, yes.

22 Q You would also get model releases for people who wished to
23 appear on an internet broadcast in the absence of 2257.

24 A I would imagine that we would, although the -- the fact of
25 2257 is what made us understand that we would need those

1 releases.

2 Q Okay. You described that the largest number that you can
3 remember is about between 50 and 70 people being on the live
4 stream.

5 A That's my recollection.

6 Q And you believe the smallest number of participants was
7 about 30.

8 A That's right.

9 Q Now, compliance with 2257 has never prevented you from
10 hosting a Masturbatathon.

11 A No. It hasn't prevented us from hosting a Masturbatathon.

12 Q Now, you talked a little bit about this, but starting in
13 2011, you moved the venue of the Masturbatathon.

14 A That's right.

15 Q And as a result of your move, the venue that you chose was
16 too small to accommodate live streaming.

17 A With a degree of comfort that we would like to bring to
18 the people who come to the event, yes.

19 Q And that's basically because there just wasn't enough room
20 to have, as you discussed, two separate rooms to keep everybody
21 apart.

22 A Yes.

23 Q So the 2011 Masturbatathon was not live streamed.

24 A It was not live streamed.

25 Q And --

Queen - Cross (Swi)

82

1 A We haven't been live streamed since -- since then.

2 Q Okay. And that includes the 2012 --

3 A And '13. That's right.

4 Q And even though those didn't appear on the internet, you
5 still checked IDs for -- for those three past -- three most
6 recent --

7 A Yes. That's my --

8 Q -- Masturbatathons.

9 A That's my understanding.

10 Q Okay. You on direct examination discussed that media
11 outlets have shown an interest in your Masturbatathons.

12 A That's right.

13 Q And, in fact, media photographers have come and taken
14 pictures.

15 A That's right.

16 Q And one of the media outlets you're aware of that came to
17 take pictures was the San Francisco Weekly.

18 A Yes.

19 Q I'd like to show you Defendant's Exhibit 113. Now, you've
20 seen this picture before, correct?

21 A Yes. You showed it to me when we were doing the
22 deposition.

23 Q And what is it?

24 A It is a picture of two people masturbating, and it appears
25 to be at the venue that the Masturbatathon was held that year.

Queen - Cross (Swi)

83

1 So I don't have much doubt that it's from the Masturbatathon.

2 Q Okay. And it accurately and fairly shows how the
3 Masturbatathon appeared that year?

4 A A small subset of it, yes.

5 Q Yes. And you see that part of this picture, the top bar
6 of this picture shows that it's from the San Francisco Weekly
7 website.

8 A Yes. That's right.

9 Q Okay. I'd also like to show you Defendant's Exhibit 114.
10 Do you recognize that?

11 A That is also a group of people who were there to perform
12 at the Masturbatathon, and they're calling them Team Lusty
13 Lady.

14 Q Okay. And that was -- as you described, this was one of
15 those group of people who were getting together and -- for
16 charity and had sponsors to participate. Do you recall?

17 A Actually, no. These -- these women were there to perform.
18 Mostly what they did was exotic dancing, I believe. If I
19 remember correctly, they work at -- at a peep show and have
20 exotic dancing and pole dancing as part of what they do, and we
21 had one stage in -- in the public room of the Masturbatathon so
22 that we could have entertain -- live entertainment.

23 Q And --

24 A And those women were there to do that.

25 Q And they actually performed at the Masturbatathon.

Queen - Cross (Swi)

84

1 A That's right.

2 Q And that picture fairly and accurately represents how they
3 appeared at the Masturbatathon that year.

4 A I would say so. I think the two on the left of the image
5 that looked more clothed were probably not quite as clothed
6 when they did their performance, but generally, that's -- I
7 remember the Cheerios t-shirts, I guess.

8 Q Okay. And as part of their performance, they took off
9 those clothes, correct?

10 A Yes.

11 Q They appeared --

12 A Or started without them and performed.

13 Q And they were ultimately nude when they --

14 A Nude or -- nude or very scantily clad. Sometimes
15 erotically clad folks are not nude, but --

16 Q Okay.

17 A -- they perform in that way.

18 Q Okay. I'd like to show you Defendant's Exhibit 115. Do
19 you recognize that?

20 A I do. That's in the room where the -- what I've referred
21 to as a talk show like entity is held.

22 Q And this picture fairly and accurately represents how that
23 room appeared at that particular Masturbatathon.

24 A At that time, yes. That's right.

25 Q You discussed on direct examination that you work for Good

Queen - Cross (Swi)

85

1 Vibrations.

2 A That's right.

3 Q But as part of Good Vibrations, you have no responsibility
4 for their -- whatever compliance they have with 2257.

5 A That's correct. I don't have any relationship with that
6 part of the company at all.

7 Q Okay. You also discussed that you appear -- you have in
8 the past, up until I believe you said 2011, appeared in some
9 sex therapy videos --

10 A Right.

11 Q -- both as a performer and also as a talking head.

12 A That's right.

13 Q But as far as those videos were concerned, you had no role
14 in checking IDs for the performers in that video.

15 A No. I didn't have a role in checking the IDs
16 specifically. I in certain cases in the later talking heads
17 ones sometimes had a responsibility looking for participants,
18 but I wasn't the person who did the compliance either on set or
19 off.

20 Q And neither you nor your center is responsible for the
21 2257 compliance for those sexual education videos?

22 A No. The Center for Sex and Culture has no relationship to
23 those videos.

24 Q And you don't have to store those records at the center?

25 A No.

Queen - Cross (Swi)

86

1 Q In your direct examination, you also discussed the photo
2 class --

3 A That's right.

4 Q -- that the center holds, and you discussed it's a process
5 of process of bringing experienced photographers together with
6 novel or new photographers.

7 A Right.

8 Q And that the class uses models.

9 A That's right.

10 Q And I believe you -- you've estimated that the club has
11 used approximately 30 models for its photo classes?

12 A Yeah. That's my best guess.

13 Q Okay. And you -- you checked IDs for those models at that
14 the photo club used?

15 A I personally didn't check IDs generally, but they were --
16 the IDs were checked, and the paperwork was left with us.

17 Q Okay. And you got model releases for those models that
18 appeared for the photo club.

19 A Yes.

20 Q And even in the absence of 2257, you would still get model
21 releases for models that might appear to, you know, have their
22 picture taken with the photo club.

23 A That's right. In particular, for the photo club, we're
24 trying to teach them best practices. So that would certainly
25 be part of it.

Queen - Cross (Swi)

87

1 Q Okay. Now, this photo club is currently inactive.

2 A Right now, it's inactive. That's right.

3 Q And it's inactive due to a lack of interest by people in
4 the group, correct?

5 A There was some attrition in people in the group, and so
6 the people who were running it decided to give it a rest.

7 Q And the last time a meeting of the photo club was held was
8 last summer.

9 A Yeah. I think it was last August, although it might have
10 been July.

11 Q And as we sit here today, there are no current plans to
12 hold a new meeting of the photo club.

13 A No, although at any point, if anyone were to say that they
14 wanted to be responsible for reconvening it, we would be glad
15 to do it.

16 Q You also discussed your collage art --

17 A That's right.

18 Q -- that you do. One might call it erotic art, is that
19 accurate?

20 A Some of the pieces I certainly think of as erotic art.
21 Not all of them, but some of them.

22 Q Okay. It's been at least a year and a half since you
23 actually produced a piece of the collage art that you talked
24 about on direct.

25 A That's correct.

Queen - Cross (Swi)

88

1 Q And one reason, I think as you discussed, that you haven't
2 created any new art is you simply haven't had the time.

3 A I hope to have an art making weekend this summer. Yes. I
4 haven't had the time.

5 Q Okay. And another reason you haven't done any new erotic
6 art is you simply haven't had the artistic inspiration to do
7 so.

8 A Combined with the time.

9 Q Right. But part of it is you just haven't been so
10 inspired to -- to try to make a new piece of art.

11 A I haven't made the time that would allow the inspiration
12 to flow anyway. Yeah.

13 Q Okay. That -- but that being said, Section 2257 has never
14 prevented you from actually creating a piece of art when you
15 were moved to do so.

16 A That is correct.

17 Q And when you have had an opportunity and created some art,
18 Section 2257 has never prevented you from showing a piece of
19 your art in an art gallery.

20 A No. Only publishing.

21 Q On direct, you discussed how the Center goes about with
22 its compliance with 2257. The volume of material that you
23 maintain at the Center for Sex and Culture for this -- for the
24 compliance of 2257, you would estimate it as a little less than
25 a thousand pages.

Queen - Cross (Swi)

89

1 A That's my estimation. Yes.

2 Q So just to flesh that out, it's a little less than a
3 filing cabinet full.

4 A It's I would say less than a file drawer full.

5 Q Okay. And you would estimate maybe a stack nine to 12
6 inches? Is that --

7 A Something like that.

8 Q Of the -- and then that represents all of the 2257
9 compliance materials that the center has.

10 A Something like that. Yes.

11 Q Now, you personally spend about ten to 12 hours annually
12 dealing with 2257 compliance?

13 A That's right. We do the -- the compliance -- this is
14 during the live stream years actually that I'm talking about,
15 and, of course, there was some time associated with preparing
16 for this -- this case, but ordinarily, it's at least ten hours
17 of presence at the Masturbatathon, and then at least two hours
18 of filing afterwards.

19 Q So for the past -- at least the past three years, you have
20 spent little to no time dealing with 2257 compliance.

21 A Only in terms of making sure that we knew where those
22 items were at any given time if things had to be moved around
23 in the filing system.

24 Q Neither you nor the center has been subject to a search
25 pursuant to 2257.

Queen - Cross (Swi)

90

1 A That's correct.

2 Q And you're not aware of anyone who's been subject to a
3 search pursuant to 2257.

4 A I'm not directly familiar with anyone who has had a 2257
5 search. That's right.

6 Q And neither you nor the center has ever been threatened
7 with prosecution under 2257.

8 A And hopefully, we will keep it that way. No. We've never
9 been threatened with prosecution.

10 Q Okay. And you do not know anyone personally who has been
11 threatened with prosecution under 2257.

12 A No. I don't personally know anyone.

13 Q You -- you have a concern that 2257 might apply to
14 individuals in their private sex lives.

15 A That is a concern that I have. It's true.

16 Q And you also believe that most individuals basically have
17 no clue about the very existence of 2257.

18 A That is also something I believe.

19 Q Now, it's difficult to tell the age of a specific person
20 just by looking at them, correct?

21 A It can be.

22 Q Yeah. And that is why -- one of the reasons why the
23 center checks IDs, because you just can't tell someone's age
24 necessarily by looking at them.

25 A That's correct. We don't -- we don't rely on a visual

Queen - Cross (Swi)/The Court

91

1 inspection.

2 Q Having those IDs allows you to be more confident about the
3 person's age and allowing them to participate in sexually
4 explicit activities.

5 A That's right.

6 Q And this is especially true since you've said that with a
7 proper ID, you would allow an 18-year-old to participate in one
8 of your Masturbatathons.

9 A If they were aware of where they were going and wanted to
10 be there, yes.

11 MR. SWINTON: That's all I have, Your Honor.

12 THE COURT: All right. A couple questions I have
13 before redirect, if any.

14 BY THE COURT:

15 Q You're -- in all the activities that you've described in
16 your testimony today, you appear to be careful that you want to
17 limit these activities to people who are 18 or older, is that
18 right?

19 A That's right.

20 Q Is that because of a legal requirement or personal choice
21 on your part?

22 A Well, really, both. Certainly, there's a legal
23 requirement, and it's pretty incontrovertible. There's also
24 the fact that this is a culture in which adulthood and -- and
25 the kind of sexual explorations associated with adulthood begin

1 at 18 not just legally, but also culturally. I'm not saying
2 that no one under 18 has sex, but that's not the -- that's not
3 the work either educationally or culturally that -- that I do.
4 We're an adult --

5 Q Right.

6 A -- organization, and my work is adult related.

7 Q Now, in your expert -- in your experience and a lot of
8 expertise in these fields, you've seen changing -- and I'm sure
9 you've studied changing tests -- changing tastes as far as sex
10 is concerned, correct?

11 A I think it's fair to say. Yeah.

12 Q All right. And it's obvious sort of, but just from a
13 Judge's point of view, we've learned in law school that less
14 than a hundred years ago, a book like James Joyce's Ulysses was
15 banned from the United States, correct?

16 A That's right.

17 Q All right. And as we look today at what's available in
18 terms of, you know, discussions of sex and things like that,
19 that seems pretty -- seems hard to believe, is that correct?

20 A I -- that's fair to say.

21 Q Okay. Now, we've also read or at least I've read and I'm
22 sure it's in the common press, that -- and we had a witness
23 yesterday who talked about sexting, S-E-X-T --

24 A Right.

25 Q -- X-T-I-N-G.

1 A Right.

2 Q That is, using cell phones to send sexual messages and
3 that this had gained a great deal of interest among young
4 people, is that correct?

5 A It is my understanding that it's a fairly common or at
6 least commonly accepted thing --

7 Q All right.

8 A -- among young people.

9 Q And that would be true for young people under age 18 as
10 well as over age 18.

11 A It sure would, and I have a real concern about that.

12 Q Okay. Now, you live in California, correct?

13 A That's right.

14 Q Now, totally aside from the requirements of 2257, and I
15 know you're not a lawyer, but are you aware of any state laws
16 in California that prevent you in your artistic endeavors from
17 having people under 18 participate in any of your activities
18 you've described here today?

19 A I'm not familiar -- well --

20 Q And --

21 A -- 18 --

22 Q -- if you don't know, you can say you don't know.

23 A Here's what I -- here's what I think I know. 18 is the
24 age of consent in California, and so if I'm talking about the
25 kind of endeavor that I discussed as the Masturbatathon, that's

1 going to be a sexually related and sexually explicit
2 environment that I would understand people under 18 not to be
3 legally allowed in. That -- that's my understanding.

4 Q Okay. Because of the California State law.

5 A Federal as well, but I --

6 Q Well --

7 A -- my understanding is that in California, 18 is the age
8 of majority, and I would assume that it's a State -- that it
9 would be a State regulation as well.

10 Q All right.

11 A I may be incorrect about that, but that is my assumption.

12 Q Okay. Are you aware of any state in which it is the -- it
13 is an age under 18 that is the age of consent or permission to
14 engage in sexual activities in a public nature?

15 A It has been my understanding over the last 20 years or so
16 that there are other states -- I couldn't name them with
17 assurance to you -- that had younger than 18 ages of consent in
18 some cases, only if the young person was getting married.

19 Q Okay. Now, you talked about your collage work and that --
20 do you -- do you -- would you have an artistic interest in
21 including sexually explicit depictions in your collage work?
22 Is that something you would like to do if it were not for 2257
23 and the difficulties of compliance?

24 A I would certainly -- I would certainly -- I do -- I do
25 still already include some sexually explicit depictions from

1 time to time, but I would be interested in publishing them.

2 Q Okay.

3 A Something that I haven't pursued.

4 Q Because of 2257 or other reasons?

5 A Because of 2257. Specifically because of 2257.

6 Q Now, do you have any interest in including any depictions
7 of people under 18 in your collage work?

8 A That --

9 Q Sexually explicit.

10 A That would not be an interest of mine. No.

11 Q All right. Even if they were like 17 years 10 months?

12 A If I knew they were 17 years 10 months, I would not
13 include them in my collage art.

14 Q You would not, because --

15 A I would not.

16 Q -- of the law.

17 A Because of the law and because as a sexologist and sex
18 educator, I'm -- I'm well aware even when morays change, that
19 this is also a fraught question, and it is a personal comfort
20 level as well as a legal awareness for me to keep adult
21 sexuality adult. Does that make sense?

22 Q And I assume that you -- you weren't asked at all about
23 child pornography in this case, but I -- there has been other
24 testimony about it, but I assume you believe that's something
25 that is appropriately illegal.

1 A I believe that that is appropriately --

2 Q Okay.

3 A Yes.

4 Q All right. Now --

5 A Absolutely right.

6 Q But -- so your -- your -- and I'm asking these questions,
7 because one of the things that Judges sometimes have to think
8 about is line drawing and whether --

9 A Right.

10 Q -- a line has been drawn in an appropriate place or not.
11 Okay?

12 A Right.

13 Q And it sometimes can be a difficult question. But if I
14 understand your testimony, you're comfortable with the line
15 being drawn at 18, that if a person is above 18, they should be
16 allowed to participate in the activities that you get involved
17 in, but if they're under 18, they should not.

18 A That's right.

19 Q Okay. Do you know other people in your field who disagree
20 with that and who think that 17 or 16 or 15 is okay?

21 A I know that there are people in my field who have talked
22 about 16 being a more appropriate age of consent. I certainly
23 don't know of anyone who has talked about that in the context
24 of say a sexually related event like the one that I described.
25 So I think really, what they're talking about is a situation

1 where 16 would be the legal age of consent --

2 Q Okay.

3 A -- to sex.

4 Q All right. Now, let's get back to sexting for a minute.

5 You -- because there seems to be some evidence that -- and I'll

6 use the word children, under 18 are sexting, and sometimes,

7 that includes graphic, sexually explicit images of themselves

8 perhaps to each other. Are you aware of instances like that?

9 A I'm aware of that. I'm aware of consensual -- discussion
10 of this happening consensually, and I'm also aware of it
11 unfortunately happening nonconsensually.

12 Q All right. And sometimes it appears to be happening with
13 third parties, that is, a boy and a girl may have -- who are
14 dating may have done it with each other, and sometimes, they'll
15 then include a third person. Are you aware that that's -- is
16 sometimes occurring --

17 A I'm not --

18 Q -- in this age of cell phones?

19 A When you're saying this, are you referring to including a
20 third person in the sex or are you referring to sending the
21 image onto a third person?

22 Q Sending the image of the two of them to a third person.

23 A Yes. Yes.

24 Q All right.

25 A I'm familiar with this --

1 Q All right.

2 A -- kind of case too.

3 Q Now, is that a concern of yours?

4 A It's a concern to me for two reasons. One, before
5 somebody turns 18 and begins to be able to maturely make
6 decisions about how they want to be depicted on the internet in
7 perpetuity --

8 Q Yes.

9 A -- at least as of now, those kinds of images could show
10 back up later and affect their ability to get a job, et cetera.
11 So that is of concern to me, and -- and I try to talk -- when
12 I'm talking to college students, I try to talk about this
13 actually.

14 Q Yes.

15 A But the other reason is because some percentage of that
16 material is being made by people and of people who are under
17 18, and that I think officially makes it child pornography,
18 whether they had any idea that that's what they were making,
19 and, of course, then when that leaves the couple relationship,
20 because these are love tokens now often, when that leaves the
21 couple relationship, then it has entered the legal world of
22 child pornography that people can't see, own, trade, et cetera.
23 So it becomes damaging and dangerous not only to them, but
24 potentially, to others because of the way the laws are.

25 Q All right. Now, you have you thought -- well, that's --

Queen - Redirect (Mur)

99

1 THE COURT: Okay. That's all the questions I have.
2 All right. Redirect, Mr. Murray?

3 REDIRECT EXAMINATION

4 BY MR. MURRAY:

5 Q Let's follow up on the sexting issue. Apart from persons
6 under the age of 18, the culture and the media has reported
7 there have been cases of the kids, the 16, 17 --

8 A Right.

9 Q -- year olds doing this with each other, you're also aware
10 that adults over the age of 18 and certainly young adults up to
11 age 30 and even beyond are sexting to each other.

12 A When they can figure out how to use a cell phone, yes.

13 Q Okay. And in that case, we're talking about taking a
14 photograph, an explicit photograph, it might be of one person,
15 it might be of two persons, and sending it to each other by
16 means of a cell phone --

17 A Right.

18 Q -- is that correct?

19 A Right.

20 Q Okay. Are you aware that 2257 would require in that
21 situation each of those persons to collect IDs, make
22 photocopies of the IDs, keep them in their house, put a label
23 on the image that they just sexted showing their address where
24 the 2257 records can be maintained, and that they would then
25 have to send a letter to the FBI telling them which 20 hours a

Queen - Redirect (Mur)

100

1 week they would be available to have those records checked?

2 Are you aware that 2257 requires that?

3 THE COURT: You object?

4 MR. SCHWARTZ: Yeah. I'm going to object to this
5 question.

6 THE COURT: Overruled. You can answer. It's
7 somewhat argumentative, but you can answer. Go ahead.

8 A While -- while I don't know that were I giving a lecture
9 to college students talking about this, I would have laid all
10 of those requirements out, I certainly believe that 2257
11 regulations don't exempt personal explicit pictures. I don't
12 know that there's anything in the language of the law that
13 exempts such things. So I have to assume that they are
14 included.

15 BY MR. MURRAY:

16 Q Okay. Do you know anybody in that situation who's
17 complying with 2257 under those circumstances?

18 MR. SCHWARTZ: Objection. That calls for
19 speculation.

20 THE COURT: Overruled.

21 A I don't know of anyone who on a private level thinks that
22 this is applicable to them. As I think I've referenced, there
23 are people in the erotic art world and in the journalism world
24 who don't even understand that these laws might apply to them.
25 So while it's true this is -- what I'm about to say is

1 speculation, it's an educated level of speculation. I don't
2 believe the average American knows that this law exists.

3 BY MR. MURRAY:

4 Q And do you think that if the average American knew that
5 they could be charged and convicted of a felony if they were
6 even an adult sending a sexually explicit message from
7 themselves to their intimate partner over a cell phone without
8 keeping the records, do you think that that would have a
9 chilling effect on how many of these messages they would send?

10 MR. SCHWARTZ: Your Honor, that certainly calls for
11 speculation.

12 THE COURT: It's really speculation, but I'll allow
13 her to answer it anyway.

14 A Because people do these kinds of private communications,
15 understanding them to be private at least in their minds, to
16 tell you the truth, I don't know that it would have a chilling
17 effect, but I think that it would be extremely surprising and
18 concerning to people to hear that this were the case.

19 BY MR. MURRAY:

20 Q Okay. Now, let's talk about your collage art. You say
21 that 2257 is preventing you from publishing it, is that
22 correct?

23 A That's right.

24 Q Well, what makes you think that -- that you can create it
25 and show it at a gallery without complying with 2257?

1 A That's an extremely good question, and the fact is I don't
2 know that I can legally --

3 Q Well --

4 A -- do those things, but I do know that once something is
5 published and -- and accessible forever, that that ups the
6 ante.

7 Q Well, if you knew that 2257 applied to you at the point at
8 which you actually produced the collage art that contains
9 sexually explicit images, would that deter you from creating
10 it?

11 MR. SCHWARTZ: Your Honor, this question was asked
12 and answered.

13 THE COURT: Well, you know, is it your -- let's take
14 Renoir. He painted a lot of nude women. Are you saying that
15 if the Metropolitan Museum of Art publishes an art book with a
16 nude Renoir in it, that they have to put a 2257 notice in
17 there?

18 MR. MURRAY: Well, only if the nude were created
19 after 2009, but if they put up --

20 THE COURT: Well, Renoir is not -- Renoir is not a
21 very good example. Are you saying modern artists --

22 MR. MURRAY: Yes.

23 THE COURT: -- and if their work hangs at a museum,
24 that would apply?

25 MR. MURRAY: Absolutely, because the artist, if it's

Queen - Redirect (Mur)

103

1 of a real live -- a real human being, and if it's explicit or
2 nude, and therefore showing the genitals, ever since 2009, the
3 statute applies. They have to keep the records, and they have
4 to put a label on the -- on the artwork, and if it's displayed
5 without that label, someone has committed a crime under 2257.

6 THE COURT: Okay. All right. Any further questions?

7 MR. MURRAY: Yes.

8 BY MR. MURRAY:

9 Q The -- I want to make it clearer on the Masturbatathon.
10 Is 2257 having an adverse influence or not on your willingness
11 to live stream any future Masturbatathon?

12 MR. SCHWARTZ: Objection.

13 THE COURT: Well, I think --

14 MR. SCHWARTZ: She asked and answered this on direct.

15 THE COURT: I'll sustain that, because that was not
16 brought up by cross I don't think.

17 MR. MURRAY: Well, then that's all I --

18 THE COURT: I mean, she answered that.

19 MR. MURRAY: No. That's -- I agree, Your Honor. I'm
20 sorry.

21 THE COURT: Any recross?

22 MR. MURRAY: That's all I have.

23 MR. SCHWARTZ: Briefly.

24 RECROSS-EXAMINATION

25 BY MR. SCHWARTZ:

1 Q You send text messages, correct?

2 A I do.

3 Q Okay. But you yourself have never sent an image of
4 yourself to a significant other via text?

5 A Strangely enough, I have not.

6 Q Okay. And you don't know for certain anyone who has
7 personally sent a sexually explicit image?

8 A I really presume that I know plenty of people in my life,
9 but I don't know any specific incident that I could label with
10 a person. No. So now.

11 Q And your knowledge of sexting comes from word of mouth?

12 A Word of mouth and the media largely. I'm sure that at
13 least one of the conferences I've attended in the last couple
14 of years has had a session on sexting. So there's a bit of
15 academic work associated with that as well.

16 MR. SCHWARTZ: That's all, Your Honor.

17 THE WITNESS: Thank you.

18 THE COURT: Okay. Thank you very much.

19 THE WITNESS: Thank you.

20 THE COURT: You're excused. Okay. We'll take a ten-
21 minute recess until quarter of, and then we'll go to 12:25, and
22 we'll just have an hour for lunch today. Thank you.

23 (Recess taken, 11:31 a.m. to 11:44 a.m.)

24 THE COURT: Okay. Please be seated. Okay. Next
25 witness, please.

Steinberg - Direct (Mur)

105

1 MR. MURRAY: At this time, the plaintiffs call the
2 plaintiff, David Steinberg.

3 THE CLERK: Raise your right hand.

4 DAVID STEINBERG, PLAINTIFF'S WITNESS, SWORN

5 THE CLERK: Please be seated.

6 THE COURT: All right.

7 THE CLERK: Please state your full name and spell
8 your last name for the record.

9 THE WITNESS: My full legal name is Steven David
10 Steinberg, S-T-E-I-N-B-E-R-G. I generally go by my middle
11 name, David.

12 DIRECT EXAMINATION

13 BY MR. MURRAY:

14 Q And what city do you reside in, Mr. Steinberg, or cities?

15 A San Francisco.

16 Q Okay. And what is your current profession?

17 A I'm a photographer, journalist, editor, and publisher of
18 erotic materials.

19 Q Okay. And what is your educational background?

20 A I have a Bachelors degree in mathematics from Oberlin
21 College. I did a year of graduate study in political science
22 at Princeton University but didn't get a degree.

23 Q Where's Oberlin College?

24 A Outside of your home town of Cleveland.

25 Q Okay. And what year did you achieve your Bachelors degree

1 in mathematics?

2 A 1965.

3 Q Now, during the course of your career, have you authored
4 articles on human sexuality?

5 A Yes. I've written about sexuality in general. Most
6 commonly, I wrote a monthly column on sex and gender issues
7 called "Comes Naturally" for 15 years. I wrote 158 monthly
8 columns for that and have done other articles as well.

9 Q What was the publication that you did that for?

10 A Originally, I wrote "Comes Naturally" for a magazine
11 called Spectator, which is a weekly magazine in the
12 San Francisco Bay area. Eventually, I also distributed what I
13 wrote online, and when Spectator eventually went out of
14 business, I continued to write for my online audience.

15 Q When did you begin your career as a writer of -- on the
16 subject of human sexuality? What year approximately?

17 A In the late 80's. Maybe '91. I'm actually not sure when
18 that -- I think it was '91.

19 Q It's been a long time then?

20 A Yes.

21 Q Okay. What other publications have some of your articles
22 appeared in that you can recite? For example, did they appear
23 in Playboy? Have you had any articles in Playboy?

24 A I had an article in the Playboy Advisor. I published in
25 -- well, lots of -- I maintained a blog for a while for the

1 San Francisco Chronicle, Boston Weekly, a lot of alternative
2 weeklies, Libido magazine, which was an art literary magazine
3 dealing with sexuality, Cupido magazine, who I also work for in
4 other capacities in Norway publishes my writing regularly.
5 There's a long list of journals that I've published in.

6 Q Now, have you also edited any books of photography related
7 to human sexuality?

8 A Yes, I have.

9 Q And what was the first book that you edited in that genre?

10 A The first book was called Erotic by Nature. The subtitle
11 was A Celebration of Life, of Love, and of our Wonderful
12 Bodies. It was published in 1988.

13 Q Okay. And would you describe what that book consisted of?

14 A That book was a mixture of photo -- mostly, it was
15 photography and fictional short stories. It also included some
16 drawings and some poetry.

17 Q What kinds of photographs appeared in it?

18 A These were black and white art photographs ranging from
19 what I would call erotic and sensual but including some that
20 were more sexual or what I would call sexually explicit.

21 Q So they're -- they involve nudity and sexual explicitness
22 in some of these photos?

23 A Yes, in many of them.

24 Q Okay. And what kind of photographers submitted to this
25 book?

1 A A wide range of art photographers. I believe there were
2 61 contributors to the book as a whole. At the -- at the time,
3 it was the only book that I knew of, which is why I wanted to
4 publish it, that addressed sexuality in an open and I thought
5 thoughtful and emotionally mature way.

6 Q And what -- what was the age range of the persons depicted
7 in these nude or sexually explicit poses, if you recall?

8 A I -- a wide range from 18 onto people who were in their
9 50s and 60s.

10 Q Okay. Now, you mentioned Cupido magazine. What is Cupido
11 magazine?

12 A Cupido is a monthly magazine that has existed now for
13 close to 30 years in Norway. It is an intelligent and erotic
14 magazine that combines journalism and sex education pieces with
15 visual material and fiction that's erotic in nature.

16 Q And does it include photographs that are sexually
17 explicit?

18 A Yes, it does.

19 Q And photographs that are nude exhibitions of the genitals?

20 A Yes.

21 Q Okay. And what -- do you have a relationship to that
22 magazine?

23 A Yes. I've been their U.S. photo representative for --
24 well, over 20 years now, I guess, almost 25 years.

25 Q And what does it mean to be their U.S. photo

1 representative?

2 A I met the publisher and editor of Cupido in 1988 shortly
3 after Erotic by Nature was published. They admired my book and
4 for a while, distributed it in Scandinavia and said look, you
5 seem to know the kind of photographer -- you seem to know the
6 photographers doing the kind of work that we would like to
7 publish in Cupido; we're having trouble finding those
8 photographers; would you represent us and sort of broker the
9 work of American photographers for publication in Cupido.

10 Q And did you agree to do so?

11 A Yeah.

12 Q And how have you gone about doing that over the years?

13 A Well, I have a network of photographers that I have met
14 through the time that I was putting Erotic by Nature together
15 and sort of by word of mouth, and as the word got out that I
16 was working for this magazine that would publish this kind of
17 work and did a responsible job of reproducing the work and paid
18 decently well, I met more and more photographers who were
19 interested in submitting work to the magazine.

20 Q And is there a genre that is associated with this type of
21 photography, a name for it?

22 A I've coined the term fine art, sexual photography,
23 although I should make clear, Cupido doesn't only publish
24 sexual photography, which to me means photographs of people
25 being sexual, but also what I would call erotic photography,

Steinberg - Direct (Mur)

110

1 but the -- the genre of people who are trying to address the
2 subject matter of sexuality from a fine art point of view,
3 which is something that most people don't even know exists and
4 which I've made a project of trying to publicize and
5 demonstrate to people I've come to call fine art sexual
6 photography.

7 Q Okay. Now, you're familiar with 2257?

8 A More and more. Yes, I am.

9 Q Okay. And can you tell the Court whether 2257 has
10 prevented you from embarking on any particular project with
11 Cupido?

12 A Yes, it has.

13 Q And would you explain to the Court what that project was
14 and how 2257 impacted it?

15 A Cupido is primarily a Norwegian magazine. For a time in
16 the '90s, it also had a Danish and a Swedish edition, and at
17 that time, I started to try to persuade the editors to publish
18 an English language edition that could be distributed in the
19 United States as well as to English speaking people around the
20 world, and eventually, the publisher got excited about this
21 project and began to think about what it would really mean. I
22 was going to be the editor of the magazine, and was the idea --
23 the American editor. We would take the Norwegian magazine.
24 We'd translate it into English, maybe make some adaptations to
25 an American audience and then hopefully distribute it in the

1 United States.

2 Q What happened?

3 A As I began more aware of 2257, largely from my involvement
4 in this case actually, I became aware that 2257 would present
5 serious legal problems for this project, namely, that it would
6 be illegal to sell it in this country in retail outlets because
7 there's no way that Cupido could meet 2257 requirements. Maybe
8 half of the photographers who appear in the magazine are
9 European. They don't maintain records according to 2257
10 standards, and although my understanding is that the magazine
11 -- that somebody from the United States could subscribe to the
12 magazine in Norway and have it mailed to them from Norway
13 without running afoul of 2257, there's no way that book stores,
14 stores that distribute magazines, places like say Good
15 Vibrations --

16 BY THE COURT:

17 Q Well, can I interrupt? This magazine, it's published in
18 Norway, you said?

19 A That's right.

20 Q Correct? Do you know that all of the people depicted are
21 over age 18 or not?

22 A I don't know.

23 Q You don't know that?

24 A I don't know what -- well, there's two issues. One, the
25 age of consent in Norway is 16.

1 Q Is 16.

2 A And I don't know what -- I believe that's right. I
3 shouldn't say that with a hundred percent certainty.

4 Q Well, do you know --

5 A I know that --

6 Q -- that all the people in that magazine are over 16?

7 A Yeah. Presumably.

8 Q Well, when you say presume, you mean they look over 16?

9 A I don't know what procedures Cupido has to make sure that
10 they're compliant with Norwegian law.

11 Q Do you know?

12 A The only -- the only thing I know about is that during my
13 time of working with Cupido, there were people in Norway who
14 challenged -- it may be that Norway is 18. They challenged one
15 photograph that I had submitted to them, not my own photograph,
16 but of a photographer that I represented, thinking that the
17 woman in the photograph looked underage to them.

18 Q Was it a man or woman?

19 A A woman.

20 Q Yes.

21 A So I got a frantic phone call from the publisher saying
22 people are saying this and we have to prove that she is of age.
23 Cupido does not require me --

24 Q When you said this -- the publisher in Norway called you?

25 A Yes.

Steinberg - Direct (Mur)

113

1 Q Now, he wanted to be assured that she was of age.

2 A More than be assured. He had to demonstrate to the Court
3 in Norway proof that she was of age.

4 Q And what -- of age is what age?

5 A I'm really not sure. It might be 18. It might be 16. I
6 don't know.

7 THE COURT: Well, Mr. Murray, I mean, I'm happy to
8 hear his testimony, but legally, are you taking the position
9 that a magazine produced in a foreign country that has no age
10 requirement is -- can be published in the United States without
11 any regard to any State laws or Federal law?

12 MR. MURRAY: No. Not at all, Your Honor. On the
13 contrary. What we're suggesting is that --

14 THE COURT: Because I thought your -- the basis of
15 the other witnesses was well, we're sure people are 18. We
16 agree with 18 as a dividing line.

17 MR. MURRAY: Yes.

18 THE COURT: Now, this witness is saying he wants --
19 he was thinking of importing the magazine from a country where
20 16 is the dividing line.

21 MR. MURRAY: No, Your Honor. That was not the --
22 that was not what we were trying to suggest.

23 THE COURT: Well, that's the fact.

24 MR. MURRAY: Well, if I can develop it. I don't --

25 THE COURT: Yes. Go ahead. Go ahead, but, I mean, I

Steinberg - Direct (Mur)

114

1 -- I'm not sure what this -- fine. I'll shut up and listen.
2 Go ahead.

3 MR. MURRAY: Okay.

4 BY MR. MURRAY:

5 Q Mr. Steinberg, do you understand that under U.S. law, 18
6 is a legal age?

7 A Yes.

8 Q And you're a photographer, is that correct?

9 A Yes.

10 Q Okay. And when you -- and you take photographs of
11 sexually explicit images, do you not?

12 A I do.

13 Q And do you make sure that every person that you've ever
14 photographed in that situation is over the age of 18?

15 A Yes.

16 Q Okay. And do you make sure that any photographs of that
17 kind that you send to Cupido is of adults?

18 A Yes.

19 Q Okay. Now, the project, as I understand it, was that you
20 were going to help them publish a magazine in the United States
21 that would comply with U.S. law, correct?

22 A Yes.

23 Q And that would mean that every person in the magazine
24 published in the United States would have to be at least 18 or
25 older if they were in a sexual pose, correct?

1 A Yes.

2 Q But it would also mean that in order to publish a U.S.
3 version of Cupido limited to images of people who were adults,
4 in order to do that under U.S. law, under 2257, you would have
5 to get from Norway the photo IDs of any of the European
6 participants who were photographed, correct?

7 A That's correct.

8 Q And would you be able to do that?

9 A Well, no. There was -- there -- presumably, photographers
10 in Europe when they are photographing their models have their
11 own ways of assuring themselves that their models are of
12 whatever age is required. I don't -- I don't know all the
13 details, but I'm guessing that European countries do not have
14 stringent requirements comparing to 2257.

15 So although it would be possible to publish a
16 magazine in which if anybody questioned the age of anybody in
17 the magazine, proof could be obtained showing that that person
18 was over 18, that's quite different from satisfying the
19 requirements of 2257.

20 Q Okay. And so as a consequence of that, did the project
21 involving publishing a U.S. edition of Cupido of images of
22 adults over the age of 18 occur or not occur?

23 A At that point, the publisher was no longer interested.

24 BY THE COURT:

25 Q Well, how is it different from 2257? If you get -- if you

1 were able to get photo documentation of the -- that all of the
2 people depicted were over 18, isn't that what 2257 requires?

3 A Well, I wish that that was all that 2257 requires, but
4 2257 requires, as has been testified here, complicated
5 procedures of how you help maintain these files, how they're
6 cross-referenced. So in order to be able --

7 Q Well, okay.

8 A -- to put a statement --

9 Q Okay. Well, once you --

10 A -- here's where the 2557 files are kept, they're kept in
11 this office in Oslo, Norway, it would require them to do a
12 whole lot more than just be able to demonstrate --

13 Q Well --

14 A -- that there are people over 18.

15 Q -- is this going to just be the same magazine that was
16 published in Norway, or you were going to publish a separate
17 magazine for the United States?

18 A I don't know what they were --

19 Q Well, isn't that important?

20 A It was important. I --

21 Q And you don't know the answer to that, do you?

22 A I think that I --

23 Q Well, do you -- go ahead.

24 A I think that what they were talking about is hoping to do
25 a magazine that was essentially the same as the Norwegian

Steinberg - The Court/Direct (Mur)

117

1 edition. They had this issue between their Norwegian and their
2 Danish editions, because the laws in Denmark were somewhat
3 different, and for a while, they tried to do different content,
4 but in the end, they were -- it -- they -- my understanding was
5 that they wanted to get to a point where, for example, the
6 visual content in the magazine in Norway would be the same as
7 the visual content in the United States.

8 Q Well, then it would include 16 and 17-year-olds.

9 A No. I think they were willing to -- they weren't -- they
10 would not have the slightest problem with restricting it to
11 people over 18 if that was what was required.

12 Q Did you have a specific discussion about that?

13 A No, but they're not particularly interested in young -- I
14 mean, I -- it --

15 Q Go ahead.

16 A -- just would not be a problem to them. They don't need
17 to have 16-year-olds in their magazine to make the magazine
18 successful.

19 BY MR. MURRAY:

20 Q In any case, the -- the magazine project that would have
21 been in the U.S. would have involved complying with 2257,
22 correct?

23 A Yes. It would have had to had a 2257 statement in it to
24 be sellable in the U.S.

25 Q Okay.

Steinberg - Direct (Mur)

118

1 THE COURT: Well, that's just inconsistent with what
2 he just said. He didn't have any idea. He has no recollection
3 of discussing it.

4 BY MR. MURRAY:

5 Q Well, did you discuss 2257 with the publisher?

6 A Yeah. I did. I mean --

7 MR. SCHWARTZ: Objection, Your Honor. This is
8 calling for hearsay.

9 THE COURT: But didn't you just say a few minutes ago
10 that it would have been the same magazine, and it would have
11 included 16 and 17-year-olds, because that's --

12 THE WITNESS: Well, let me --

13 THE COURT: -- age of consent in Norway?

14 THE WITNESS: Let me be clear. I did not have a
15 specific conversation about him, about --

16 THE COURT: Right.

17 THE WITNESS: -- how they would accomplish this.

18 THE COURT: Okay.

19 THE WITNESS: But what I did say to him was that, you
20 know, you need to be aware that if you want to sell this
21 magazine in the United States, you will have to be able to put
22 this statement in the magazine so that the retail outlets are
23 not violating the law by selling it.

24 THE COURT: Go ahead.

25 BY MR. MURRAY:

Steinberg - Direct (Mur)

119

1 Q What -- what was the next book of photos that you
2 published or edited after Erotic Nature?

3 A The next book that I did was called Photo Sex, Fine Art
4 Sexual Photography Comes of Age.

5 Q And when did you publish that?

6 A That was I believe 2003.

7 Q And what kind of book was that?

8 A This was a book of black and white fine art photography by
9 a number of different photographers depicting sexuality in many
10 different ways.

11 Q And did that include any of your own photographs?

12 A Yes. Out of 150-odd pictures, six of them were mine.

13 Q And what was the artistic message in that book?

14 A The -- the point of this book was to say there are fine
15 art photographers who consider human sexuality a legitimate
16 subject for photography. They're doing an amazing body of
17 work, and this book will be a showcase for that work.

18 Q And so what kind of images appeared in that book?

19 A These were all black and white fine art photography
20 ranging from photographs of people kissing to photographs of
21 people having intercourse, the full range of human sexuality.
22 The premise of the book was that each photo in the book,
23 regardless of the type of sexuality it was portraying, spoke --
24 was presenting sexuality in one way or another.

25 Q Okay. And now, when did you yourself become a

Steinberg - Direct (Mur)

120

1 photographer? How long have you been doing it?

2 A I started doing sexual photography in 1999.

3 Q Okay. And have you been doing it ever since?

4 A I have.

5 Q Okay. And do your photos appear in other books besides
6 your own?

7 A Yes, they have.

8 Q And can you give us an example of that?

9 A Oh, I'd have to -- can I consult notes here?

10 Q Sure, if there's something that will refresh your
11 recollection.

12 A I've appeared in a number of other books sometimes as
13 cover photos for books. For example, there was a book called
14 Ripe Fruit, which was a collection of erotic fiction involving
15 older people, and one of my photos appeared on the cover of
16 that. Some of my books have -- my photos have appeared in sex
17 education books as graphics. There was a book called Sexual
18 Secrets by Marty Klein that did a number of my -- used a number
19 of my photos, a book called Sexual Pleasure, another education
20 book by Barbara Keesling that used a number of my photos
21 inside.

22 Q Did there -- did you specialize or do you specialize in
23 any particular type of fine art photography?

24 A I specialize in photos that show people that are not what
25 the culture typically acknowledges as people who are sexually

Steinberg - Direct (Mur)

121

1 desirable or attractive. So I emphasize older people, heavier
2 people, people with disabilities. The -- one of the messages
3 of my photography that I -- is that we are all worthwhile
4 attractive sexual people, not just young glamorous people that
5 we tend to see in advertising, on TV, in the movies, and so on.

6 Q Okay. Now, in the course of your photography, have you
7 photographed couples in sexual acts?

8 A That's what I do. I photograph couples. What I try to
9 think of is regular folks usually at home being sexual in
10 nontheatrical, nonglamorous ways just like regular -- like
11 regular people do.

12 Q And how do these people come to you?

13 A Originally, I became intrigued with the project of trying
14 to capture something emotionally honest about sexuality on film
15 and persuaded a couple of friends to model for me, to pose for
16 -- I don't pose people, but to be my subjects. After I did
17 that work, we -- it produced a number of photographs that we
18 were pretty excited about. Cupido was excited and published me
19 and encouraged me to do more. I showed some of the prints from
20 my first photo shoot to a bunch of other friends who were
21 enthusiastic about getting me to photograph them.

22 Gradually, I began to have my work shown in art
23 shows, erotic art shows, and as people learned about my work,
24 the network of people who were interested in being photographed
25 by me grew. Generally, I find my models not by soliciting

Steinberg - Direct (Mur)

122

1 them, but by people who come to me and say would you be
2 interested in photographing me and my partner.

3 Q Have you won any awards as a result of your photography?

4 A I have. Let's see, in 2010, I was named erotic
5 photographer of the year by Leydig Trust in London. In 2012, I
6 was one of the original five -- group of five artists that were
7 given the name Erotic Masters by the Seattle Erotic Art
8 Festival.

9 Q Now, when you photograph couples, where do you -- where do
10 you photograph them? I think you might have started out saying
11 in their homes.

12 A I generally photograph people at -- at home. The -- what
13 I'm interested in in my photography is the intimacy and the
14 connection, emotional connection that happens between people.
15 I'm not interested in people being glamorous. I'm not
16 interested in the details of who's doing what to whom. To me,
17 the most important part about sexuality is the intimacy and the
18 connection that it makes possible between two people.

19 So that's what I am interested in, and I feel like
20 the best way to photograph people in that way is where they are
21 most comfortable, and so I prefer to shoot them at home. I
22 don't pose them. I don't give them things they're supposed to
23 do. I try to make them comfortable with the admittedly unusual
24 situation that they're going to be sexual with a third person
25 present with a camera in his hand, and I try to work with them.

Steinberg - Direct (Mur)

123

1 I meet with them ahead of time. We talk. The point is for
2 them to be comfortable with me so that they can relax and be
3 natural in my presence, and hopefully, I can then capture some
4 of that on film.

5 Q And where do you -- where do you do your own work then
6 after you've left the shoot? Do you have an outside office or
7 where is your home base?

8 A I have two homes, one in Santa Cruz, California and one in
9 San Francisco, and my San Francisco apartment is partially a --
10 it's partially home and partially my office.

11 Q So you set aside a room to do your work there?

12 A Yes.

13 Q Okay. Do you maintain regular business hours as a
14 photographer there?

15 A No. Not really.

16 Q Okay. And do you live alone?

17 A I do.

18 Q Now, did you also publish a book called Divas of
19 San Francisco?

20 A I did.

21 Q And what is that about?

22 A That is a book of portraits of transsexual women that I've
23 come to know through a club in San Francisco called Divas of
24 San Francisco.

25 Q And how long was that project?

Steinberg - Direct (Mur)

124

1 A I think the first photos I did were in 1993, and the book
2 was published I think 2008.

3 Q Okay. And did that book include any -- any sexual images?

4 A Not that I would consider sexual images. There are I
5 think 59 photos in that book. Four of those photos are full
6 body nudes. They -- I don't consider them sexual photos. On
7 the other hand, they do show the genitals of the people in the
8 photos, and so I suppose they could be called lascivious,
9 although I never have the slightest idea what that means.

10 Q Now, in the course of your work as a photographer taking
11 pictures of people engaged in sexual acts, do you maintain
12 records under 2257?

13 A I do.

14 Q And how do you go about collecting these records?

15 A At the time when I photograph couples, I have them sign
16 the model release, and also, I photograph their ID.

17 Q Okay. Do you have any interest in taking sexual pictures
18 of minors under the age of 18?

19 A No.

20 Q Okay. Now, and where do you keep the 2257 records?

21 A The hard copies are in a file cabinet, and then I also
22 transcribe the information into a database, which I keep on my
23 computer.

24 Q But are the records kept at your residence?

25 A They're kept at my residence/office in San Francisco.

Steinberg - Direct (Mur)

125

1 Q What is your understanding of the labeling requirement of
2 2257?

3 A Well, my understanding is evolving. As is true of many
4 artists, I, I think, have been naive about the requirements of
5 2257. What I'm understanding from the process of being
6 involved in this case is that I'm now required to put a 2257
7 statement on every -- I work on film. I don't do digital
8 photography. So when I have, for example, proofs of photos
9 that are taken at a shoot, I might take 750 to 1,000
10 photographs in a shoot. I obtain four-by-six proof prints from
11 the lab that does my work, which I then share with the models
12 for them to be able to choose photos that they want me to print
13 in a more finished way for them.

14 My understanding now is that any time that I make a
15 set of proofs for -- for my subjects, that I'm required to have
16 a 2257 statement on every one of those proofs, for example.

17 Q And how would you do that?

18 A I don't know how I would. I suppose I would have to -- if
19 I put a -- if -- my understanding is that it must be
20 prominently displayed. So to -- you know, some photographers
21 put a copyright notice on the face of their photo, which seems
22 to me it defaces the photo, but --

23 THE COURT: It seems what, the copyright notice?

24 THE WITNESS: That it defaces the photo.

25 A You know, you're trying to create a beautiful image, and

Steinberg - Direct (Mur)

126

1 now all of a sudden, it's supposed to say copyright so-and-so.
2 I don't put copyright notices on my photos for that reason.

3 My understanding is that to be prominently displayed
4 on a four-by-six photograph, I would somehow have to figure out
5 how to put the wording onto that -- I don't know how I would do
6 that. I suppose I could have a sticker, but the sticker, in
7 order for it to be legible, would probably cover half the
8 photo. I really don't --

9 THE COURT: You're talking about four-by-six inches.

10 THE WITNESS: Yeah. You know, those are the proofs
11 that I -- that I use.

12 A I suppose it might be possible to put it on the back of
13 the photo, but I don't know if that would be -- I don't think
14 that that would be considered prominently displayed.

15 BY MR. MURRAY:

16 Q Now, if you did put it on the front of the photo, would it
17 -- what would that do to the integrity of the photo?

18 A Well, I think it would -- I mean, I really think it would
19 cover what, a third of the photo or half the photo. I mean, it
20 would just be ridiculous. It would be impossible for my
21 subjects to review the photos with this big sticker on the
22 front of it with all -- with all this wordage.

23 Q And then when they -- after they review the 750 or 1,000
24 possibilities, do they then select ones that they want you to
25 create in larger form?

Steinberg - Direct (Mur)

127

1 A Yes. They -- that's generally what we do is I exchange
2 with them. Basically, I -- I work with -- with subjects in two
3 ways. If they do not want me to publish their photos or
4 display their photos in art shows, then they pay me to do a
5 photo shoot with them, but in general, what I prefer is to do
6 an exchange with them where in return for me doing this for
7 them for free, they allow me to make use of the photos in those
8 ways.

9 Q And then when they select the ones they want, how big are
10 those prints?

11 A Those are my -- that's up to them, but I'd say eight-by-
12 ten prints or 11-by-14 prints.

13 Q Okay. And --

14 A Eight-by-ten would be what they would want most commonly.

15 Q And do you regularly put a 2257 label on those eight-by-
16 ten prints when you give them to your customers?

17 A No. I've never done that.

18 Q Now, I want to show you some exhibits, Mr. Steinberg. I
19 just want to make sure I recite the correct number here.

20 MR. MURRAY: And I'm going to do it by the ELMO, Your
21 Honor, if I can.

22 BY MR. MURRAY:

23 Q I'm displaying, Mr. Steinberg, a --

24 THE COURT: What exhibit number --

25 MR. MURRAY: Exhibit --

Steinberg - Direct (Mur)

128

1 THE COURT: -- is this?

2 MR. MURRAY: This is exhibit -- Plaintiff's Exhibit
3 60.

4 BY MR. MURRAY:

5 Q Can you identify that photograph, Mr. Steinberg?

6 A It's one of my photographs.

7 Q And is the next one of your photographs as well?

8 A Yes.

9 Q Next page? And are these of some of the couples that you
10 talked about taking those photographs?

11 A Yes.

12 Q And --

13 A This one is sideways, but yeah.

14 Q Is that another -- the third page, is that one of your
15 photographs --

16 A Yes.

17 Q -- as well?

18 A Turn that the other way.

19 Q And is that gentleman one of the persons you photographed?

20 A Yes, he is.

21 Q And is that another couple that you photographed?

22 A Yes.

23 Q And is that yet another couple that you photographed?

24 A Yes.

25 Q And these photographs were taken in their homes?

Steinberg - Direct (Mur)

129

1 A Yes, generally speaking. Occasionally, people have some
2 reason they don't want me to photograph them at their homes,
3 and sometimes they come to my place or we work out another
4 site.

5 Q What about this photograph? Is that one of yours?

6 A Yes, it is.

7 Q And is that of another couple that you photographed?

8 A Yeah. The woman in this photograph I believe was 63 when
9 I photographed her, and the man was 67.

10 Q And then when you are finished with a photo shoot like
11 this, as you've indicated, you at least give the couple prints
12 of your photographs for their own private use?

13 A Yes.

14 Q And you may also ask them for permission to publish their
15 photo elsewhere?

16 A Yes.

17 Q And is that another one of your photographs?

18 A Yes.

19 Q And is that another couple that you photographed?

20 A Yes.

21 Q And is that yet another couple that you photographed?

22 A Yes.

23 Q Now, I want to show you what has been marked as
24 Plaintiff's Exhibit 62, and I won't go through every page of
25 it, but do you have a website?

Steinberg - Direct (Mur)

130

1 A I do.

2 Q What's it called?

3 A I guess it's called EroticbyNature.

4 Q Okay.

5 THE COURT: What's it -- I'm sorry?

6 THE WITNESS: Eroticbynature. That's also the name
7 of the first book that I did.

8 BY MR. MURRAY:

9 Q And are there images that you photographed on your
10 website?

11 A Yes.

12 Q And does Plaintiff's Exhibit 62 represent those images?

13 A Presumably, that -- yeah. These are photos from -- I
14 recognize from the website.

15 Q Okay. And then next I want to show you what has been
16 marked as Plaintiff's Exhibit 61.

17 MR. MURRAY: And, in fact, let me approach the
18 witness, Your Honor, and just have him affirm.

19 BY MR. MURRAY:

20 Q That all of the photographs in Exhibit 61, those are your
21 photographs?

22 A That's a lot of photos, but yes. They look like they are.

23 Q And then I want to show you what has been marked as
24 Plaintiff's Exhibit 63 and ask you if this is a spreadsheet
25 showing information about all of the photographs that we've

Steinberg - Direct (Mur)

131

1 just gone over.

2 A Appears to be. Yes.

3 Q And is this what we provided to the Government in
4 discovery?

5 A It looks like that. Yes.

6 Q And you recorded the -- from 1999 all the way to 2012, the
7 -- the shoots that you did of people in sexually explicit
8 poses?

9 A That's right.

10 Q And did you record the dates of birth?

11 A Of the people in the photos, yes.

12 Q And therefore, their ages?

13 A Yes.

14 Q And have you done -- have you counted them up from that
15 spreadsheet to tell us how many for the -- how many total
16 photographs -- shoots were there on this spreadsheet?

17 A I'm not sure how many shoots there were. There were 260
18 people --

19 Q That's what I meant.

20 A -- involved in the shoots.

21 Q 260 individual people whose images you photographed?

22 A Yes.

23 Q And did you count from your spreadsheet how many of the
24 260 were over the age of 25?

25 A I did.

Steinberg - Direct (Mur)

132

1 Q And how many were there?

2 A 229, which is 88 percent.

3 Q And did you count how many on the spreadsheet were over
4 the age of 30?

5 A Yeah. It was 198, 76 percent.

6 Q And did you count how many were between the ages of 30 and
7 39?

8 A There were 82, which is 32 percent.

9 Q And how many were over 40?

10 A 116, which is 45 percent.

11 Q And what was the oldest person on this group?

12 A The oldest person was 72, I believe.

13 Q And were there numerous people in their 60s on this list?

14 A Yes.

15 Q And numerous people in their 50s?

16 A Yes.

17 Q And in their 40s?

18 A Yes.

19 Q And out of the 260, can you tell how many of them were
20 under 20, the age of 20?

21 A Under 20. No. I didn't -- I didn't count those
22 separately. I don't -- I don't -- I don't have that.

23 Q Well, let's look to the first page. Are you able to read
24 that or do I need to zoom it in for you?

25 A Yeah. If you don't make it too small. I'm pretty blind.

Steinberg - Direct (Mur)

133

- 1 Well, none -- none in that list.
- 2 Q Okay. Any in that list so far?
- 3 A No.
- 4 Q Okay. Let's go to page 2.
- 5 A You're talking about under 20?
- 6 Q Under 20. Yes.
- 7 A So that would be 19 or 18 on here.
- 8 Q Yes.
- 9 A No. None there. Nope.
- 10 Q Okay. That's the second page. Let's go to the third
- 11 page.
- 12 A Okay. None there. Not yet.
- 13 Q Let's go to page 4.
- 14 A There's one person who's 19.
- 15 Q And that's on the fifth line -- sixth line?
- 16 A Sixth line. Uh-huh.
- 17 Q All right. So you found one person under 20. Anything --
- 18 any others on that page?
- 19 A Keep going. I can't see the bottom. No. That's all
- 20 there.
- 21 Q Let's go to the next page. Any so far?
- 22 A And none -- none in the top half. No.
- 23 Q How about on this page?
- 24 A No. None. There's one person who's 19.
- 25 Q There is one?

Steinberg - Direct (Mur)

134

1 A There is one. I don't know.

2 Q Ah, yes.

3 A Yeah.

4 Q Right there?

5 A That's it.

6 Q Okay. So that's the second one.

7 A Right.

8 Q And then on this page so far?

9 A No. No.

10 Q And then finally, on the last page?

11 A No. So I guess it's two out of that last.

12 THE COURT: I think we're going to have to take a
13 recess. Is this a good breaking point?

14 MR. MURRAY: Yes. Yes. In fact, I think I'm done,
15 Your Honor, but I was going to ask for a minute to confer.

16 THE COURT: All right. Well, you can check your
17 minutes. All right. But I have a conference call in another
18 case. So that's why I want to recess now. So we'll see you at
19 1:30. All right. Thank you.

20 THE CLERK: All rise.

21 (Recess taken, 12:26 p.m. to 1:30 p.m.)

22 THE COURT: All right. Mr. Steinberg, please. Okay.
23 Were you -- you still have another question or two?

24 MR. MURRAY: Yes, Your Honor.

25 THE COURT: Go ahead.

Steinberg - Direct (Mur)

135

1 BY MR. MURRAY:

2 Q Mr. Steinberg, going back to Plaintiff's Exhibit 63, just
3 in the interest of being particularly careful, did we find on
4 closer inspection one more 19-year-old on the second last page,
5 right about there?

6 A Oh, yes. I see that. There is another one.

7 Q So there were a total of three rather than two.

8 A Three. That's right.

9 Q Now, as a result of your experience in recruiting other
10 photographers, compiling books of photographs created by other
11 photographers, can you tell the Court whether -- how many you
12 estimate -- how many fine art photographers that you know who,
13 like you, create images of ordinary people engaged in sexually
14 explicit conduct?

15 A There -- there are quite a few. I have worked with --
16 now, the books that I've edited, Photo Sex was sexually
17 explicit conduct. Erotic by Nature was broader than that, but
18 I would say of the fine art erotic photographers, I personally
19 know maybe 150, 200 photographers that do that work. The
20 number of people doing sexually imagery specifically is smaller
21 but is substantial.

22 Q And what if you include nudity?

23 A Yes. If you include nudity, then certainly, there are
24 hundreds. I mean, nude photography has been an established
25 genre in American photography since the 1930s.

Steinberg - Direct (Mur)

136

1 MR. MURRAY: Thank you. I would just offer into
2 evidence --

3 THE COURT: Well, Mr. Murray, is it your position
4 that nude people are covered by 2257, just being nude?

5 MR. MURRAY: As long as the genitals are exposed,
6 yes.

7 THE COURT: All right. Well, I'm not sure --

8 MR. MURRAY: That's the way I read the -- the Dost
9 case, the Justice Department's preamble and their explanation.

10 THE COURT: The statute says lascivious exhibition of
11 the genitals or public area.

12 MR. MURRAY: Yes.

13 THE COURT: It has to be lascivious.

14 MR. MURRAY: But even the Third Circuit's decision in
15 U.S. v. Knox held that even a clothed genital can be a
16 lascivious exhibit --

17 THE COURT: That is true.

18 MR. MURRAY: -- of a genital.

19 THE COURT: It has to be lascivious.

20 MR. MURRAY: Yes. Yes.

21 THE COURT: Whatever that means.

22 MR. MURRAY: Well, I think --

23 THE COURT: Okay.

24 MR. MURRAY: -- to be safe, anybody who shows a nude
25 genital better -- better collect the records, because the -- if

Steinberg - Cross (Sch)

137

1 they're wrong, it's a five-year potential prison sentence.

2 So --

3 THE COURT: Okay.

4 MR. MURRAY: But I would offer into evidence, Your
5 Honor, Plaintiff's Exhibit 61, 62, and 63.

6 THE COURT: Yes. All right. Admitted.

7 MR. MURRAY: Thank you.

8 THE COURT: All right. Cross-examine.

9 CROSS-EXAMINATION

10 BY MR. SCHWARTZ:

11 Q Good afternoon, Mr. Steinberg.

12 A Good afternoon.

13 Q You were just talking about erotic photographers that you
14 know, and one of those erotic photographers that you're aware
15 of is a photographer by the name of Craig Morey.

16 A Yes.

17 Q As you discussed on direct, you classify the subjects of
18 your erotic and your sexually explicit photographs as being
19 regular people.

20 A Yes.

21 Q And they're not fashion models.

22 A Right.

23 Q And they're not the type of professional models you might
24 see say like Playboy.

25 A Right.

Steinberg - Cross (Sch)

138

1 Q In fact, as you said, the goal of your photography is to
2 make a statement about what people are really like.

3 A Yes.

4 Q And part of that is because you want your art to be of
5 regular people because there's such a prevalence of youthful
6 and perfect looking people in mainstream media.

7 A That's correct.

8 Q When you do a photo shoot for sexually explicit material,
9 you take a picture of the driver's license of the model,
10 correct?

11 A Yes.

12 Q And even in the absence of 2257, you still would take a
13 picture of the driver's license of a model --

14 A Yes.

15 Q -- that you're using. You also execute a model release
16 when you do a photo shoot.

17 A Yes.

18 Q And the purpose of that is it allows you to use that
19 picture for commercial purposes once you're done.

20 A Correct.

21 Q And even in the absence of 2257, you would still execute a
22 model release.

23 A That's right.

24 Q And it's difficult to estimate a person's age just by
25 looking at them, isn't it?

1 A Yes.

2 Q Some people look older than they are. Some people look
3 younger than they are.

4 A Certainly.

5 Q And regarding the subject of your photography, you
6 certainly don't rule out taking pictures of younger couples.

7 A That's true.

8 Q And you would not rule out taking pictures of a couple,
9 both of whom are 18, as long as they provided you with proper
10 identification.

11 A Right. As long as I could be certain that they were over
12 18.

13 Q And that's why you check their IDs, to make sure they're
14 over 18.

15 A Exactly.

16 Q Because you have no interest in getting involved in child
17 pornography.

18 A That's correct.

19 Q As -- as you discussed on direct examination, over the
20 course of your career, you've taken sexually explicit pictures
21 of people of many different ages.

22 A Yes.

23 Q And as part of your involvement in this case, do you
24 recall that you figured out the numbers of people you've
25 photographed of those different ages?

Steinberg - Cross (Sch)

140

1 A Yes.

2 Q Okay. I'm going to show you Exhibit 147.

3 A Okay.

4 Q And do you recognize these?

5 A That's the interrogatories. Yes.

6 Q These are the -- these are the interrogatories you
7 answered as part of your involvement in the case.

8 A Yes.

9 Q Okay. I'm going to turn to page 5, which is interrogatory
10 number 9, and you'll see there that there's a question asking
11 for the breakdown of the age ranges that you've done, and just
12 so it's clear on the record, because I think it was a little
13 confusing when you were testifying on direct, the category of
14 people 19 to 20 years old you show in this response is four.

15 A Right.

16 Q And the people 21 to 25 is 52.

17 A Right.

18 Q And the people between 26 and 30 is 41 people.

19 A Yep.

20 Q Okay. Now I'm going to show you Plaintiff's Exhibit 63.
21 You --

22 MR. SCHWARTZ: I'm actually going to approach, Your
23 Honor, and give him a copy.

24 BY MR. SCHWARTZ:

25 Q I think it will be easier if you're able to flip through

1 it.

2 A Okay.

3 Q Do you recognize that as the exhibit you were talking
4 about --

5 A Earlier?

6 Q -- earlier in your direct testimony?

7 A Yes. I think this is a different list. I -- it's been a
8 little bit confusing, because -- because I'm here and I didn't
9 have access to my computer. The numbers that I was counting up
10 that I recited in direct testimony I think came from a slightly
11 different list than this one. So --

12 Q And I -- and I understand, and --

13 A Or this one is different from the one that you were just
14 talking about from the interrogatory.

15 Q So the numbers in the interrogatories are slightly
16 different from --

17 A Right.

18 Q -- exhibit --

19 A Right.

20 Q -- Plaintiff's Exhibit 63, but do you recognize 63 as what
21 you were just referring to with Plaintiff's counsel?

22 A The --

23 Q This --

24 A The --

25 Q This one in front of you.

Steinberg - Cross (Sch)

142

1 A This one, yes. That's right.

2 Q Yes. It's number 63, just in case there's confusion.

3 When I say 63, that's that chart.

4 A We're talking about this one. Okay.

5 Q Yep. Now, if you'd count four columns over, you see that
6 it's labeled shoot.

7 A Yep.

8 Q Okay. And that -- can you just explain to the Court what
9 a shoot number is?

10 A Well, I think that -- what that means, a consecutive
11 listing of photo shoots that I've done.

12 Q Okay. Now, I'd like you to go down and look at photo
13 shoot number one.

14 A Okay.

15 Q And that includes two people, and they were ages 25 and
16 39, correct?

17 A That's correct.

18 Q Okay. Now, if you could drop down to photo shoot 35.

19 A Okay.

20 Q That includes individuals who are ages 25 and 73, correct?

21 A That's correct.

22 Q Okay. And photo shoot 48?

23 A Okay.

24 Q And that's just one individual who is 22 years old.

25 A Yes. That's right.

Steinberg - Cross (Sch)

143

1 Q And photo shoot 79.

2 A Okay.

3 Q Again, that's also just one individual, but that one was
4 21 years old.

5 A That's correct.

6 Q Okay. If we drop down to photo shoot 91 --

7 A Right.

8 Q -- that includes two individuals, one age 19 and one aged
9 37.

10 A That's right.

11 Q Going to just a few down to 95.

12 A Okay.

13 Q That's two individuals, age 21 and 28.

14 A Right.

15 Q A few more down, photo shoot 110.

16 A Okay.

17 Q That includes two individuals, ages 21 and 53.

18 A Right.

19 Q Now, when you do a photo shoot, you collect everybody's
20 IDs at the same time, correct?

21 A Yes.

22 Q And you keep all those records for each photo shoot
23 together.

24 A Yes.

25 Q Now, on Exhibit 63, there's also another column where the

1 model's identification is shown.

2 A Yes.

3 Q And mostly, what it appears in Exhibit 63 is the state of
4 the driver's license --

5 A That's right.

6 Q -- that is shown.

7 A Mostly, it's driver's license. Occasionally, it's
8 passports that I use.

9 Q And, for example, if we go down to shoot number 210 --

10 A Okay.

11 Q -- that says Ireland, correct?

12 A Yes.

13 Q And that's because what you used there was an Irish
14 passport.

15 A That's correct.

16 Q And the next column over from where it says Ireland,
17 that's that model's actual birthday.

18 A That's correct.

19 Q And then the column after that, December 29, 2009, that
20 was the date of the photo shoot.

21 A That's right.

22 Q And then you conveniently put the exact age that that
23 makes him on that day, and here, that person was 28.

24 A That's right.

25 Q Now I'm going to show you what has been marked as Exhibit

Steinberg - Cross (Sch)

145

1 119A. It will pop up on the screen for you.

2 MR. SCHWARTZ: 19 -- okay.

3 BY MR. SCHWARTZ:

4 Q Do you recognize that?

5 A It looks like one of my model releases.

6 Q And this is one of the model releases you keep in the
7 ordinary course of your business, correct?

8 A Yes.

9 Q Okay. If we turn to the second page, that's a copy of the
10 form of the identification that you used as part of the model
11 release.

12 A Okay.

13 Q Correct?

14 A Yes.

15 Q Yes. And this -- the ID on the second page is a passport,
16 correct?

17 A Yeah.

18 Q And, in fact, I think if you look closely, you can see it
19 is a Passport from Ireland.

20 A Yes.

21 Q Now, do you recognize this as the ID relating to shoot
22 number 210 that we looked at in Exhibit 63?

23 A Well, I think so. I've only -- as far as I know, I've
24 only used an Irish passport for ID once. So I think it's the
25 same one.

Steinberg - Cross (Sch)

146

1 Q You think it's the same one? In fact, if you look on
2 there, both -- they both say Ireland.

3 A Right.

4 Q And both the passport and your chart indicate the same
5 birthday.

6 A Right.

7 Q And they both have a surname that starts with M.

8 A Right.

9 Q Both the spreadsheet and your -- and the passport.

10 A Okay.

11 Q And both the first name on the spreadsheet and the
12 passport start with S.

13 A Okay.

14 Q So I think it stands to reason that this is the ID that
15 you used for shoot 210.

16 A Yes.

17 Q Okay. I'm now going to show you what's been marked as
18 Defendant's Exhibit 120C. Do you recognize that?

19 A I do.

20 Q Is that one of your pictures?

21 A Yes, it is.

22 Q Do you remember taking that picture?

23 A I do.

24 Q Okay. And that picture fairly and accurately represents
25 how the people that appeared on that day?

Steinberg - Cross (Sch)

147

1 A Yes.

2 Q Do you recall that the -- that the man, the male in this
3 picture in 120C is also the person who signed the release in
4 119A

5 A Yes.

6 Q It's the -- it's the same person.

7 A I remember the shoot.

8 Q Okay.

9 A Yes.

10 Q And again, just to connect all the dots, he's the person
11 from shoot 210 in Exhibit 63.

12 A That's correct.

13 THE COURT: What was shoot 210?

14 MR. SCHWARTZ: The person appearing in this
15 picture --

16 THE COURT: Right.

17 MR. SCHWARTZ: -- correlates to shoot 210 in Exhibit
18 -- Plaintiff's Exhibit 63.

19 A He's the guy who had the Irish passport.

20 BY MR. SCHWARTZ:

21 Q Yes.

22 A Yes.

23 Q Yes. So he's -- this also correlates with the model
24 release in Exhibit -- Defendant's Exhibit 119A, which is this
25 person's model release and identification.

Steinberg - Cross (Sch)

148

1 THE COURT: Okay.

2 BY MR. SCHWARTZ:

3 Q The last time you published a book with sexually explicit
4 images was back 2003, correct?

5 A That's right.

6 Q And you haven't edited a book for publication containing
7 sexually explicit images since then?

8 A That's right.

9 Q Now, you would agree with me that there's really no
10 objective criteria to determine what is art.

11 A That's --

12 MR. MURRAY: Excuse me.

13 A -- certainly true.

14 MR. MURRAY: Objection, Your Honor. I'm sorry. I
15 couldn't hear the question. Could it be repeated?

16 MR. SCHWARTZ: I'll repeat.

17 THE COURT: Yes.

18 BY MR. SCHWARTZ:

19 Q You would agree with me that there is no objective
20 criteria for people to determine what is art.

21 A Well, there's been a great debate about what is and is not
22 art. There are many people who think they have objective
23 criteria about art, but I would agree with you that it is a
24 subjective term.

25 Q And the point of your art is not for it to be sexually

1 arousing.

2 A Yes, and, in fact, if you ask me what I think is
3 significant about something being art or what I would call a
4 fine art sexual photograph, that would be the point, that it's
5 one thing to take a photo of sexual activity for the purpose of
6 arousing somebody, which I think is legitimate, but it's a
7 different project to take a photo of people being sexual where
8 the artist is making his or her own statement about sexuality.
9 In fact, A.D. Coleman, who is a photography critic for the --
10 what used to be the New York Times and The Village Voice once
11 said that what created sexual art in his mind was where the
12 photographer has something to say other than oh, look, sex is
13 happening and we get to watch.

14 So the photographer has a point of view that they are
15 either consciously or unconsciously expressing through their
16 photography.

17 Q And despite that, it is possible that someone looking at
18 your artwork could find it sexually arousing.

19 A It's possible, but that's not the purpose of the
20 photograph.

21 Q Sure.

22 A People could find a photograph of a hammer sexually
23 arousing. Some people do.

24 Q I'd like to show you Defendant's Exhibit 168G. Do you
25 recognize that photo?

1 A I do.

2 Q Is that one of your photographs?

3 A No. It's one of Barbara Alper's photographs.

4 Q And do you recognize that as being Barbara Alper's
5 photograph?

6 A Well, it says so --

7 Q Okay. And was it --

8 A -- underneath. So

9 Q Did you have it in one of the book that you published?

10 A Yes. That's in Photo Sex.

11 Q I am now going to show you what's been marked as
12 Defendant's Exhibit 148. This is another photograph of yours,
13 correct?

14 A Yes, it is.

15 Q And just by looking at it, that -- just by looking at that
16 picture, you can't tell how old the people are, can you?

17 A No. I wouldn't be able to.

18 Q I'm going to show you exhibit -- Defendant's Exhibit 149.
19 Do you recognize that as one of your pictures?

20 A Yes.

21 Q And just by looking at that picture, you can't tell how
22 old the person is in that picture.

23 A That's correct.

24 Q I'm going to show you Exhibit 150. Again, this is one of
25 your pictures, correct?

1 A Yes.

2 Q And just by looking at it, you can't tell how old those
3 people are.

4 A That's correct.

5 Q Exhibit 151. Do you recognize that also as one of your
6 photos?

7 A Yes.

8 Q And one of the reasons why it's difficult to tell how old
9 the people are in this picture is the main subject of the
10 picture is completely shrouded, correct?

11 A Yes.

12 Q I'm going to show you plaintiff's -- Defendant's Exhibit
13 152. Do you recognize that picture?

14 A Yes. That's one of my photos.

15 Q And again, just by looking at it, you can't tell how old
16 those people are.

17 A That's correct.

18 Q Defendant's Exhibit 153.

19 A That's one of my pictures.

20 Q And do you recognize that as one of the pictures you
21 discussed in your direct examination?

22 A In my direct examine -- one of the pictures I discussed?

23 Q Of -- of the diva -- one of the diva pictures.

24 A Yes. That's one of the pictures.

25 Q And, again, just by looking at it, you can't tell how old

1 that person is.

2 A That's correct.

3 Q Let me show you Defendant's Exhibit 154. Do you recognize
4 that?

5 A Yes. One of my pictures.

6 Q And again, just by looking at it, you can't tell how old
7 they are.

8 A That's correct.

9 Q Okay. One more. Defendant's Exhibit 155. Do you
10 recognize that as one of your pictures?

11 A Yes.

12 Q And just by looking at it, you can't tell how old those
13 people are?

14 A That's correct.

15 MR. SCHWARTZ: Your Honor, I'm going to move into
16 evidence Defendant's 148 through 155 and Defendant's 168. And
17 if I have -- might have one moment to confer.

18 BY MR. SCHWARTZ:

19 Q And just one more picture. Hopefully, we'll get up the
20 right one.

21 MR. SCHWARTZ: This is also Defendant's Exhibit 168G,
22 Bates number 001756. Bates 001756.

23 BY MR. SCHWARTZ:

24 Q Do you recognize that picture?

25 A Yes.

Steinberg Cross (Sch)/Redirect (Mur)

153

1 Q Is that one of your pictures?

2 A No.

3 Q Does that picture appear in your book that you edited?

4 A It's in Photo Sex.

5 Q Okay. And who --

6 A That's --

7 Q Who is the photographer?

8 A Barbara Nitke is the photographer.

9 Q Okay. And you -- and you recognize that picture from
10 being from your book?

11 A Yes.

12 MR. SCHWARTZ: Okay. That's all I have, Your Honor.
13 Thank you.

14 THE COURT: All right. Redirect?

15 MR. MURRAY: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. MURRAY:

18 Q Mr. Steinberg, you were asked a number of questions about
19 whether looking at certain depictions, whether just by looking
20 at the depictions, you could tell how old the person was.

21 A That's correct.

22 Q Okay. I want to show you, for example, the first picture
23 in Plaintiff's Exhibit 61. That's one of your photos, is that
24 correct?

25 A Yes. I can't see the whole photo the way you've got it,

1 but yes, it is.

2 Q Now can you see the whole photo?

3 A Yes. Thank you.

4 Q I gather that just by looking at the picture, you cannot
5 tell us the precise age of these people, correct?

6 A That's correct.

7 Q Can you tell by looking at the picture whether they're
8 under the age of 18?

9 A I think you can.

10 Q And are they?

11 A Hardly. No.

12 Q And how about the next picture of yours? Do you know the
13 precise age of those people just by looking at the picture?

14 A No.

15 Q Can you tell whether or not they're under the age of 18 or
16 above the age of 18 just by looking at the picture?

17 A I would say with some certainty that they're definitely
18 over 18.

19 Q Okay. How about this picture, which is the third one?
20 Can you tell whether or not those people are over the age of
21 18?

22 A I think you can. Yes. They definitely are.

23 Q And I'm not going to belabor it by going through every one
24 of them, but is it the case that in the vast, vast majority of
25 all the photographs that you've taken, can you tell just by

Ross - Direct (Mur)

155

1 looking at the photographs that the subjects are over the age
2 of 18?

3 A I think for many or most of my photographs, you could say
4 with certainty that they're over 18, and for other photographs,
5 you would want some evidence about that.

6 MR. MURRAY: That's all I have. Thank you, Your
7 Honor.

8 THE COURT: Recross?

9 MR. SCHWARTZ: No, Your Honor.

10 THE COURT: All right. Thank you, Mr. Steinberg.
11 Next witness, please.

12 MR. MURRAY: Your Honor, we will now call the
13 plaintiff, Carlin Ross.

14 THE CLERK: Raise your right hand.

15 Carlin ROSS, PLAINTIFF'S WITNESS, SWORN

16 THE CLERK: Please be seated. Please state your full
17 name and spell your last name for the record.

18 THE WITNESS: My name is Carlin Ross. That's
19 R-O-S-S.

20 DIRECT EXAMINATION

21 BY MR. MURRAY:

22 Q And Ms. Ross, tell the Court what city you live in.

23 A New York City.

24 Q Okay.

25 THE COURT: How do you spell your first name?

Ross - Direct (Mur)

156

1 THE WITNESS: Carlin, C-A-R-L-I-N, like George
2 Carlin.

3 BY MR. MURRAY:

4 Q And what is your current occupation?

5 A I'm a sex educator.

6 Q Okay. And how long has that been the case?

7 A For the past six years.

8 Q Okay. And what is your educational background?

9 A I have a J.D. from Brooklyn Law School.

10 Q And --

11 A I'm an attorney.

12 Q And what did you do by way of undergraduate education?

13 A I got a B.A. in political science from SUNY Stony Brook.

14 Q And what year did you graduate with that degree?

15 A 1991.

16 Q And when did you graduate from law school?

17 A 1998.

18 Q Okay. And then did you become admitted to the bar?

19 A Yes.

20 Q Of what state?

21 A New York.

22 Q And did you practice law at all?

23 A I did.

24 Q And just tell the Court a little bit about what your
25 employment history has been before you became a sex educator.

Ross - Direct (Mur)

157

1 A Sure. After I graduated law school, I became general
2 counsel of an internet company, an internet service provider
3 that I took public, and then we raised a billion dollars on
4 Wall Street and cashed out, and I was able to pursue my
5 passion, which was female sexuality.

6 Q Okay. And when did that begin? What year?

7 A 2004.

8 Q Okay. And what -- what exactly did you do in 2004 to get
9 into this field?

10 A I had an idea of creating a web property for women on
11 female sexuality, and I just was talking about it and I was
12 still practicing, and I got a call from a New York Times
13 reporter and who was very interested in professional women
14 moving into the sex industry. So I sat down and we did an
15 interview, and I was kind of outed. So the front page of the
16 New York Times February I think 24th, 2004 was my picture.
17 First two words were my name.

18 So then I kind of went on an odyssey to kind of what
19 do I want to do in sex, and that's how I met Betty Dodson, who
20 is my business partner.

21 Q Okay. And so when did you meet Betty Dodson?

22 A In 2006.

23 Q And, by the way, how old are you now?

24 A I am 40.

25 Q Okay. Have you authored a book on the subject?

Ross - Direct (Mur)

158

1 A I have.

2 Q And what is the name of the book?

3 A How to Make a Girl Come.

4 Q Okay. And when is that -- when was that published?

5 A This past February, 2013.

6 Q Now, tell the Court who Betty Dodson is.

7 A Betty Dodson is an author. She had an international best
8 seller, but what she's best known for is she started the sex
9 positive feminist movement. So as some women were fighting for
10 equal pay, she was fighting for equality in the bedroom and
11 sexual rights in addition to contraception and all of those
12 things, but about women connecting to their bodies. So it was
13 heavy body image and kind of female sexual liberation.

14 Q Okay. And do you know how -- and do you still work with
15 Betty Dodson?

16 A Yes.

17 Q Is she still your business partner?

18 A She is.

19 Q How old is Betty now?

20 A Betty is 84 years old.

21 Q Okay.

22 A Years young, I should say.

23 Q And tell the Court the work that you do.

24 A So I'm editor and chief of the website. So I run the
25 website from a technical perspective, and then we have 25

Ross - Direct (Mur)

159

1 bloggers. So I manage all of their writing. I work with
2 Betty. We released her memoir. I also produce the films that
3 we -- we released and just manage all the -- I'm basically
4 taking all things Betty Dodson, making it digital.

5 Q Okay. And what is the philosophy that you and Betty
6 Dodson communicate?

7 A Our philosophy is that masturbation is the foundation of
8 all human sexuality and that to kind of -- you have to connect
9 to your body and appreciate your sex organ. We find -- we've
10 traveled the world globally, and the number one issue that kind
11 of blocks normal sexual development is genital shame. So our
12 -- our thing is about connecting to your sex organ,
13 appreciating it, connecting to your body and then being able to
14 connect to a partner and have intimacy and positive
15 relationships.

16 Q Okay. And you mentioned that you have videos or DVDs.
17 What kind of DVDs do you create, you and Betty?

18 A The majority of our work is just female masturbation.

19 Q Okay. And where do you create these videos?

20 A Most of them are shot in Betty's livingroom.

21 Q Okay. And she lives where?

22 A She lives at 121 Madison Avenue.

23 Q But I mean she's in New York City too?

24 A She's in New York City. Yes.

25 Q Okay. And is that where business records are maintained

Ross - Direct (Mur)

160

1 for those films and the website?

2 A Yes.

3 Q And do you maintain 2257 records?

4 A Yes.

5 Q And are those maintained in her apartment or residence?

6 A Yes.

7 Q Okay. Now, and generally speaking, what are the ages of
8 the performers in the DVDs that you and Betty have created?

9 A There's a range. I think we had one 21-year-old woman,
10 but it's from 25 to 84. Betty appeared in one video. So I
11 know 75 percent of the women who appeared on videos are 25 and
12 older.

13 Q Okay. Do you and Betty have any interest whatsoever in
14 using minors in any of the sexually explicit videos that you
15 create or produce?

16 A No.

17 Q Now, I want to show you on the monitor what has been
18 marked as Plaintiff's Exhibit 45. Can you identify that?

19 A Yeah. I believe that's the video Betty first produced,
20 "Self Loving".

21 Q And is that a picture of Betty Dodson on the back --

22 A That is --

23 Q -- as she existed then?

24 A Yes.

25 Q And can you describe what the nature of this video is?

Ross - Direct (Mur)

161

1 A Sure. Betty did a workshop for 25 years. It was an
2 extension of the consciousness raising that was done during the
3 feminist movement when women would get together in a circle and
4 talk first person about their lives.

5 So Betty had the idea of doing sexual consciousness
6 raising. So she put together a workshop. It's a two-day
7 workshop, and this kind of documents what that would have been
8 like if you were participating in a workshop.

9 Q And does it indicate how old the performers were?

10 A I don't think so.

11 Q Well just take your time.

12 A All right.

13 THE COURT: What's the exhibit number again?

14 MR. MURRAY: This is 93, Your Honor.

15 A Oh, yeah. I see. Okay.

16 MR. MURRAY: 45. I'm sorry. 45.

17 A Twenty-eight to 60.

18 BY MR. MURRAY:

19 Q And is this an educational film?

20 A Yes.

21 Q I want to show you what's been marked as Plaintiff's
22 Exhibit 46 and ask if you can identify that.

23 A Yes. That was her next film, Viva La Vulva.

24 Q And approximately when was that created?

25 A In the nine -- I think '98. Yes.

Ross - Direct (Mur)

162

1 Q And again, was that a Ms. --

2 MR. BLADUELL: Objection.

3 BY MR. MURRAY:

4 Q -- Betty Dodson video?

5 MR. BLADUELL: Objection, Your Honor. There's a lack
6 of foundation as to these questions.

7 THE COURT: Overruled.

8 A Excuse me? I'm sorry.

9 BY MR. MURRAY:

10 Q Is that a Betty Dodson video?

11 A Yes.

12 Q And is this offered currently on your website?

13 A Yes.

14 Q As is -- was Plaintiff's Exhibit 45, is that something
15 that you current offer on your website?

16 A Yes.

17 Q And you're familiar with all of the Betty Dodson films?

18 A Yes.

19 Q And you tell the Court what this film generally is about?

20 A This is a film that Betty did kind of -- kind of like an
21 anniversary video of all the work she had done, and she had
22 women come in and they did several of the rituals she does in
23 her workshop, and it was kind of celebrating, you know, 25
24 years of her work.

25 Q And does this indicate what the ages of the women who

Ross - Direct (Mur)

163

1 appeared in this film are?

2 A Yes.

3 Q What were their ages?

4 A Twenty-five to 68.

5 Q I want to show you what's been marked as Plaintiff's
6 Exhibit 47. Can you identify that?

7 A Yes. That's Celebrating Orgasm, her next film.

8 Q Again, by Betty Dodson, your partner?

9 A Yes.

10 Q And what is that film about?

11 A This was women showing Betty like their masturbation
12 technique. So she would film each woman as she would
13 masturbate.

14 Q And does this indicate how old the women were who were in
15 this film?

16 A Yes.

17 Q What are their ages?

18 A Twenty-six to 62.

19 Q And is this an educational film?

20 A Yes.

21 Q Is it offered on your website?

22 A Yes, it is.

23 Q Plaintiff's Exhibit 50, can you identify what that is?

24 A Yeah. This is her late -- second to latest film, The
25 Orgasm Doctor.

Ross - Direct (Mur)

164

1 Q And it says below that -- can you read that?

2 A Uh-huh.

3 Q What does it say?

4 A Two -- "Two private hands-on sex coaching sessions with
5 Betty Dodson demonstrating her latest method."

6 Q Okay. And on the back, is there a picture of Betty again?

7 A Yes. That's Betty.

8 Q Is this a video that you offer on your website?

9 A Yes.

10 Q And what is the nature of this video?

11 A Betty took her workshops, which was with a group of women,
12 and now she offers private sessions where she works one on one
13 with client. So these are women that have orgasm issues,
14 whether a result of a sexual trauma or just never had an orgasm
15 before, and so she'll work with them hands-on to show them how
16 to let go of kind of shame and guilt and touch themselves and
17 kind of work that towards an orgasm.

18 Q And then the film depicts that?

19 A Yes.

20 Q I want to show you what's been marked as Plaintiff's
21 Exhibit 117 and ask you if you can identify that.

22 A Yes. That's our latest film, Betty Dodson's Body Sex
23 Workshop. This is a remake of Self Loving. So we put together
24 a workshop today to get it on high-def and film it with the
25 latest greatest. So this is a remake.

Ross - Direct (Mur)

165

1 Q And is this offered on your website as well?

2 A Yes.

3 Q And is this an educational film?

4 A Yes.

5 Q And then finally, on films, I want to show you Plaintiff's
6 Exhibit 118 and ask if you can identify that.

7 A Yes. This is Betty Dodson, Her Life of Sex and Art.

8 Q And who created this one?

9 A This was produced by Mark Schoen. He directed and Betty,
10 and Betty had -- has traveled with a lecturer, because she
11 started her career as a fine artist, and her art kind of takes
12 you through the -- the beginning of the sexual revolution and
13 the rise of feminism. So this is kind of her stand up with her
14 having a Power Point with all the visuals and her telling the
15 stories of her journey becoming a fine artist and a feminist
16 and then a sex educator.

17 Q And is that kind of an educational documentary about
18 Betty?

19 A Betty's life, yes.

20 Q Now, in connection with the explicit videos that are
21 produced by Betty and you, do you attempt to comply with 2257?

22 A Yes.

23 Q And you're familiar with 2257?

24 A Yes.

25 Q And with respect to these DVDs, how do you go about

Ross - Direct (Mur)

166

1 complying with the law?

2 A Well, you know, photo IDs, signed releases, having, you
3 know, everything labeled right, keeping them in the foyer a
4 certain amount of steps from the front door, all those
5 regulations.

6 Q Okay. And the records are maintained where?

7 A At Betty's apartment.

8 Q Okay. Now, with respect to the videos that we put in
9 front of you, could any of the performers in the video be
10 confused as someone under the age of 18?

11 A No.

12 Q Now, what other types of information is on your website
13 besides the ability to sell a product?

14 A We have our blogs, which is text-based content. So we
15 have writers write a first person about their -- their
16 lifestyle choices. So that's text-based content. That's free.
17 Then we have Betty's research product -- project, which was the
18 Genital Art Gallery.

19 Q Well, we're going to get to that in a minute.

20 A Okay.

21 Q Let's stick with the front of the --

22 A Okay.

23 Q When you go on the website, what's the URL? What's it
24 called?

25 A Dodsonandross.com.

Ross - Direct (Mur)

167

1 Q Okay. So when you go on there, is there some information
2 that one can access without any payment?

3 A Yes.

4 Q And is any of that information -- does any of that
5 information include explicit sexual images?

6 A No.

7 Q Okay. And on that part of the website, what kind of
8 information is there?

9 A We discuss sexuality. We do a weekly YouTube video
10 podcast where Betty and I will talk for about five to seven
11 minutes about a topic, about a question that came in off the
12 site. So Betty answers sex questions, and that kind of becomes
13 the engine of the site, because we need to know what -- what
14 information people are looking for.

15 So the questions are very important. That's a very
16 highly trafficked part of the site, and then we -- Betty writes
17 sex features, which are like long form essays on different
18 topics based on what people are looking for, and then we have
19 our bloggers who blog about their personal experiences.

20 Q Okay. Now, on that part of the website, there are some
21 exhibits that actually are marked as Government exhibits, which
22 I'm sure they will show you, where there were questions posed
23 by teenagers, 14 years old, 16 years old, 17-year-olds, or
24 comments posted by those teenagers, and Betty provided some
25 information. Explain that part of the website and why that is

Ross - Direct (Mur)

168

1 there.

2 A Well --

3 MR. BLADUELL: Objection, Your Honor; lack of
4 foundation.

5 THE COURT: Overruled.

6 A It's not illegal to answer a sex question. It's illegal
7 to show a child images, but, you know, 15 to 25-year-olds
8 account for half of all new STD cases. A third of --

9 THE COURT: What kind of cases?

10 THE WITNESS: STD cases.

11 THE COURT: Okay.

12 A And a third of all --

13 THE COURT: Sexually transmitted diseases.

14 A Yeah. So 15 and 25-year-olds account for half of all new
15 STDs. They also account for a third of all HIV cases. So our
16 feeling is we will comply with the law, but these -- they're
17 having sex. Our philosophy is we would hope that they would
18 engage in outercourse, and that's what we encourage, and put
19 intercourse off until college, because the risk is too high,
20 and most likely, the young woman is not going to experience an
21 orgasm, but when they're having sex and they're looking for
22 information, we at least want to give them the facts, because
23 we want them to be safe and we want them to be healthy.

24 BY MR. MURRAY:

25 Q Okay. Now, can any of -- can anybody though go beyond

Ross - Direct (Mur)

169

1 that front page and access explicit images without doing
2 something else?

3 A No.

4 Q Okay. And do you permit anyone under the age of 18 to
5 access any of the explicit images?

6 A No.

7 Q Okay. And so if you want to go further into the website
8 where some of the explicit material is found, what does one
9 have to do?

10 A You have to have a credit card. It's behind a pay wall,
11 which is the industry standard, because you have to say you're
12 18, click, and then put in your credit card information.

13 Q Okay. And then what's on that and how much does it cost
14 to enter?

15 A Well, it's by clip. So some of the clips are as little as
16 \$3, and then some of the clips are as much as \$30.

17 Q Okay. So once you get onto that part of the website, then
18 what -- and we'll get to the Genital Art Gallery in a minute,
19 but what else is on that part of the website?

20 A On the -- the pay?

21 Q Yes.

22 A The Genital Art Gallery.

23 Q And what about -- where do I look for the videos?

24 A And that's -- yeah. All the videos are there.

25 Q Okay. Now, do you and Betty have something that is called

Ross - Direct (Mur)

170

1 the Genital Art Gallery?

2 A We do.

3 Q Okay. And do you know when approximately that was
4 originally created or approximately when?

5 A I believe 1998.

6 Q Okay. And do you know what its purpose is?

7 A The purpose is that most people think there's something
8 wrong with their genitals. The number one question we get is
9 am I normal. So the purpose was to show that there's a range
10 of genital styles. Some men are circumcised. Some men aren't.
11 Some are small. Some are large. Some have larger, you know,
12 testicles. Some don't. And with women, there's a whole range
13 of looks to -- to the labia, to colors, to browns, to purples,
14 to pinks. So it was kind of to heal genital shame.

15 Q And what are the requirements? How does it work exactly?

16 A You click on the site, and, you know, now we have to have,
17 you know, the ID and everything. So that kind of stuff, but
18 before, you would submit images of your genitals and then a sex
19 essay about your sexuality, something about yourself personal,
20 and then you would submit it to the site, and then I would go
21 in and review it and then publish it to the site.

22 Q And what would your review consist of?

23 A Well, you know, kind of -- I mean, the basics in the
24 beginning would be just formatting, to make sure everything was
25 formatted correctly. Then you're looking at the images, yeah,

Ross - Direct (Mur)

171

1 and make sure something is in keeping with our brand. You
2 know, we're a feminist brand. I don't want crude things. I
3 don't want minors. You know what I mean? You want to keep
4 things sex positive. So I would review to make sure. I want
5 healthy sexuality.

6 Q And you say that there were essays that had to be
7 submitted with this?

8 A Yes.

9 Q And what kinds of topics did you expect the essays to
10 cover?

11 A People would talk about their relationship to their
12 bodies. They would talk about the first time they had an
13 orgasm. They would talk about how they masturbate. They could
14 be someone that's older talking about how they rediscovered
15 their sexuality after giving birth or menopause or things like
16 that.

17 Q And then you would post the image?

18 A Yes.

19 Q And the essay or just the image?

20 A Yeah. No. Yeah. With the essay together.

21 Q Okay.

22 A We wanted it to have context.

23 Q Now, did the Genital Art Gallery communicate, in your
24 view, a serious educational message?

25 A Yes. I believe so, because --

1 Q And what is that message?

2 A That all genitals are beautiful and that there's a range
3 and that you can find something that looks like you, which is
4 very healing, because pornographic content, there's an
5 aesthetic, and the majority of performers get labiaplasty and
6 they bleach to make things pink. So because we don't have sex
7 ed in our schools and we've had ten years of abstinence only,
8 when you look at pornography, the young girls, they write in
9 and they go that doesn't look like me, there's something wrong.
10 So our whole thing was to say no, you're just different.

11 Q Now, I want to show you on the ELMO, what we call the
12 ELMO, Plaintiff's Exhibit 51 --

13 A Yes.

14 Q -- and ask you if you can identify that.

15 A That's a submission to the Genital Art Gallery.

16 Q And is that a representative sample of what comes in?

17 A Yes.

18 Q And that happened to be somebody who says that at the age
19 of 77, many people would consider me unable to get sexually
20 excited, is that correct? That's --

21 A That is correct.

22 Q -- how the essay begins?

23 A Uh-huh.

24 Q While I'm here, I should have shown you Plaintiff's
25 Exhibit 52 so that we would have that covered. What is that?

Ross - Direct (Mur)

173

1 A That's the video page, shows all the clips that are
2 available for purchase.

3 Q On your website?

4 A Yes.

5 Q Now, was anonymity at all important to the people who were
6 submitting materials for the Genital Art Gallery?

7 A Very much so, because these are real citizens. They have
8 careers, jobs, and families, and also, having a database of
9 people's licenses sitting around, you know, for identity theft,
10 it's just not something you'd feel comfortable, I think, as an
11 average person submitting a license to a website.

12 Q So there came a time when the --

13 MR. BLADUELL: Objection, Your Honor.

14 THE COURT: Overruled.

15 BY MR. MURRAY:

16 Q There came a time when 2257 was amended and expanded to
17 cover not only actual sexual acts, but lascivious exhibition of
18 the genitals and simulated lascivious exhibition of the
19 genitals, and did you become aware of that change in the law at
20 some point?

21 A Yes.

22 Q And did that change in the law cause you to determine
23 whether it would have an effect upon the Genital Art Gallery?

24 A Yes. I was a little worried, because there are criminal,
25 you know, penalties, jail time, and when Betty and I started

Ross - Direct (Mur)

174

1 first working together, we merged our websites. So I took a
2 database that she had of images and just poured it over, and so
3 I couldn't prove dates, and I know there was cutoffs in the
4 law. So I was a little uneasy about having all the images up,
5 because, you know, there's no precedent. I don't know what
6 lascivious means as it's interpreted in the Courts.

7 Q And it was your understanding that if the images had been
8 created after a certain date, they would be covered by the law?

9 A Yes.

10 Q And did I understand you to say that there were some
11 images as to which, because of the conversion, you would not be
12 able to prove the date of creation?

13 A Yes.

14 Q And so what did you do about those images?

15 A Well, I mean, Betty and I talked about it, and we decided
16 to, you know, pull them from the site.

17 Q And so did you remove those images from the site?

18 A We did.

19 Q And approximately how many images did you remove from the
20 Genital Art Gallery?

21 A I think about -- I think we had 2,000, and there -- there
22 are two or 300 that remain. So I guess about 17, 1,800 images
23 that we -- that we pulled.

24 Q And was that a direct result of the change in law of 2257
25 and 2257(a)?

Ross - Direct (Mur)

175

1 A Yes.

2 Q Now, then thereafter, what else did you do from that point
3 forward in order to obtain additional images for your Genital
4 Art Gallery and still comply with the law?

5 A Well, we had to, you know, put a new page requesting a
6 scanned copy of a photo ID and a signed release.

7 Q And what happened to the number of submissions that were
8 coming in?

9 A They just stopped almost completely.

10 Q Okay. What was the normal number of submissions you
11 generally received prior to that?

12 A We'd get about ten a week.

13 Q Okay. And so maybe over 500 a year?

14 A Yes.

15 Q And since you imposed that requirement, how many have you
16 gotten with people submitting their photo IDs along with their
17 genital pictures?

18 A I think we -- two or three.

19 Q Over the past how many years?

20 A 2009? Four years, I guess.

21 Q Okay. So in terms of the Genital Art Gallery then, it now
22 consists of instead of the 2,000 images, approximately how many
23 images?

24 A I think it's like between two and 300.

25 MR. MURRAY: Okay. Your Honor, I would offer into

Ross - Direct (Mur)/Cross (Bla)

176

1 evidence Plaintiff's Exhibit 51, 52, 118, 117, 50, 47, 46, and
2 45.

3 THE COURT: Okay. Couple -- oh, cross-examine. Go
4 ahead first.

5 CROSS-EXAMINATION

6 BY MR. BLADUELL:

7 Q Good afternoon, Ms. Ross.

8 A Hi, Hector.

9 Q You testified on direct that 75 percent of the performers
10 in your videos were women over 25, correct?

11 A Correct.

12 Q But there are some of them that have been under 25,
13 correct?

14 A Correct.

15 Q And you identified one that was 21, correct?

16 A Correct.

17 Q Now, are you familiar with the title Orgasmic Women?

18 A Yes.

19 Q And in that video, the women at the end of the video tell
20 their ages?

21 A Yes.

22 Q And one of them says she's 21?

23 A Yes.

24 Q And another one says she's 23?

25 A Yes.

1 Q And another one says she's 24?

2 A Uh-huh. Yes.

3 Q And another one says she's 25.

4 A Uh-huh. Yes.

5 Q And you've also said that the Genital Art Gallery has
6 included depictions of people from as young as 20 years old,
7 correct?

8 A Correct.

9 Q Now, in the Genital Art Gallery, before 2009, you didn't
10 require IDs of the people, correct?

11 A Correct.

12 Q And what you used to determine their ages was your own
13 perception from looking at their genitals of how old they were,
14 correct?

15 A Looking at the -- and reading their essay.

16 Q Okay.

17 A You can glean a lot from how someone writes, grammar, what
18 they're talking about. Yes.

19 Q But you're not an expert in looking at someone's genital
20 and determining how old they are, correct?

21 A Yes. Correct.

22 Q And the essay that you require them to write, you didn't
23 require them to state the age that they were, correct?

24 A Correct.

25 Q In fact, let me show you Exhibit 44I. This is a document

1 from your website, correct?

2 A Correct.

3 Q And the title is How to Celebrate Your Cock?

4 A Correct.

5 Q And these are the guidelines that you established for
6 their essays, correct?

7 A Correct.

8 Q And they don't require them to state their age, correct?

9 A Correct.

10 Q And at the bottom, you tell them the last sentence, that
11 you're not going to publish their -- their names or their
12 e-mail addresses, correct?

13 A Correct.

14 Q And if I can go to Exhibit 44J. And this is the -- the
15 guidelines that you provide women submitting to the Genital Art
16 Gallery, correct, for essays.

17 A Correct.

18 Q And you similarly not require there that they state their
19 age, correct?

20 A Correct.

21 Q And you similarly tell them that if they submit something,
22 you're not going to publish their names, correct --

23 A Correct.

24 Q -- or their initials --

25 A Correct.

1 Q -- of their e-mail address? Is that correct?

2 A Correct.

3 Q Okay.

4 A Oh, sorry.

5 Q I'm sorry. And you've -- you stated that after 2009, you
6 deleted some of the images from the Genital Art Gallery,
7 correct?

8 A Correct.

9 Q Because they all involved depictions -- closeups of the
10 genitals, correct?

11 A Correct.

12 Q But you're aware though that the statute applies to
13 lascivious exhibitions of the genitals, correct?

14 A Correct.

15 Q The statute doesn't say all exhibitions of the genitals,
16 correct?

17 A Correct.

18 Q Now, if we go to Exhibit number 117A, please. This is
19 another page from your website, correct?

20 A Correct.

21 Q And this is a page from your website where you allow
22 people to pay for -- to purchase videos, correct?

23 A Yes.

24 Q And in some of these -- some of these are closeups of
25 genitals, correct?

1 A Yes.

2 Q And they don't show the person's face, correct?

3 A Yes.

4 Q Now, if we go to the second page of this Exhibit 117A,
5 this is also closeups of genitals, correct?

6 A Correct.

7 Q That don't show the person's age, correct?

8 A Yes.

9 Q And in some of these pictures, the women's genitals have
10 shaved pubic hair, correct?

11 A Partially, yes.

12 Q If you see Manual Skills, Vulva Play at the lower
13 right-hand corner.

14 A Yes.

15 Q You would not be able to tell me from that picture how old
16 that person is with absolute certainty.

17 A No. I can't.

18 Q And you would not be able -- if you -- if we go to the
19 third page, there's another closeup on the top right-hand
20 corner of two people engaging in intercourse, correct?

21 A Correct.

22 Q And you cannot tell me the ages of those people.

23 A No.

24 Q Now, if we go to Exhibit 118A, please. These are
25 depictions from your Genital Art Gallery.

1 A Correct.

2 Q You're not going to be able to tell me the ages of any of
3 these people, right?

4 A No, but if someone has a genital piercing, you have to be
5 18 to be pierced. So I can see that they're of majority.

6 Q So you're assuming that they're complying with the law,
7 correct?

8 A Correct.

9 Q You don't know if they are under 18.

10 A Well, I know these women personally, but yes. I see what
11 you're saying.

12 Q No -- no one -- no one looking at it could know.

13 A Yes. Correct.

14 Q Exhibit number 18B. Does this have -- the images of
15 genitals appear on your Genital Art Gallery, correct?

16 A Correct.

17 Q And Exhibit 118C. That's also another page of the Genital
18 Art Gallery?

19 A Correct.

20 Q And Exhibit 118D. That's also another page from your
21 Genital Art Gallery, correct?

22 A Correct.

23 Q Now, let me show you Defendant's Exhibit 36, please. Ms.
24 Ross, you remember looking at this picture before, correct?

25 A I do. Yes.

Ross - Cross (Bla)

182

1 Q I showed this to you in deposition, correct?

2 A Correct.

3 Q And I asked you what was the age of the men depicted in
4 here, correct?

5 A Correct.

6 Q And you told me --

7 MR. MURRAY: Objection, Your Honor. He shouldn't be
8 trying to impeach her from her deposition before he elicits the
9 testimony in the first place.

10 THE COURT: Well, he's -- overruled. He's asking her
11 -- what was the testimony at the deposition?

12 BY MR. BLADUELL:

13 Q You told me that the person was seven -- could be -- could
14 appear 17, correct?

15 A Correct.

16 THE COURT: Overruled.

17 BY MR. BLADUELL:

18 Q Now, Ms. Ross, were you here this morning during Mr.
19 Steinberg's examination?

20 A For half of it, yes.

21 Q Okay. Do you remember that he testified about this
22 picture?

23 A No. I didn't see that.

24 THE COURT: I'm not sure if she -- anybody sitting in
25 the back.

Ross - Cross (Bla)

183

1 A I can't see back there. I mean, it was -- yeah.

2 THE COURT: I'm not sure anybody in the back can see
3 -- can see the exhibits on the computer screen.

4 BY MR. BLADUELL:

5 Q But your testimony here is that this person looks to you
6 like he could be 17.

7 A Sure.

8 Q And it's difficult to tell in this instance whether he's a
9 minor or not, correct?

10 A Correct.

11 Q And let me show you Exhibit number 120C. This is exactly
12 the same picture that I showed you before, correct?

13 A Correct.

14 Q Except that it's somewhat a different color --

15 A Uh-huh.

16 Q -- correct?

17 A Correct.

18 Q And that it has a label above the head of the -- the man,
19 correct?

20 A Correct.

21 Q Ms. Ross, you would agree with me that it's difficult to
22 look at someone and determine their age, correct?

23 A Sometimes, yes.

24 Q And there is a lot of factors that could influence how old
25 a person looks, correct?

1 A Correct.

2 Q Like race could be a factor, correct?

3 A Correct.

4 Q You -- you agree with me that people of color could look
5 younger than they are, correct?

6 A I don't know -- I don't know that. I would think people
7 of color might look older, but --

8 Q Or could look older than they are.

9 A Yes.

10 Q It depends on the person.

11 A Yeah. Of course. Yes.

12 Q But race could be a factor.

13 A Yes.

14 Q And breast implants could be a factor, correct?

15 A Correct.

16 Q They could make a woman look older than she really is,
17 correct?

18 A Correct. But don't you have to be a certain age to get
19 breast implants? No?

20 THE COURT: Well, you have to wait for the next
21 question.

22 THE WITNESS: Oh, sorry.

23 THE COURT: You might remember that from law school.

24 MR. BLADUELL: I have nothing further, Your Honor.

25 THE COURT: Let me just ask some questions --

1 THE WITNESS: Uh-huh.

2 THE COURT: -- just to make sure.

3 BY THE COURT:

4 Q Some of the photographs that you have -- have been shown
5 here as exhibits you've put on the websites that you've
6 described without ever meeting the people, is that correct?

7 A Correct.

8 Q That is, you solicit people to send in photographs, is
9 that correct?

10 A Yes. It's all virtual.

11 Q Now, do you require when they send in the photograph, that
12 they send proof of their age or it's only if you decide that
13 you want to use the photograph or not at all?

14 A Well, we require that now since the law has changed, but
15 before, we didn't require anyone to send in their age.

16 Q All right. When you say the law changed, you're talking
17 about the 2009 change?

18 A Correct.

19 Q Okay. So before that, you did not require -- well, before
20 that, what did you require people to send in if they sent a
21 photo?

22 A A photo and the sex essay. That was really all we asked.
23 It was kind of a trust situation, anonymity and trust, and --

24 Q Okay.

25 A -- you know, Betty's brand is such a positive, authentic

1 brand --

2 Q All right.

3 A -- that it kind of attracts certain people.

4 Q All right. So after 2009, you now require a photo and
5 what? And documentation?

6 A And a signed release.

7 Q Well, what about any -- do you require any documentation
8 about age?

9 A Well, yes. They have photo ID. They have to scan a copy,
10 and then they have to sign a release where they say I'm 18
11 and --

12 Q Okay.

13 A -- you know.

14 Q So they send you a -- you require a photo ID, but you
15 don't know what -- you've never seen the person live, correct?

16 A No. No.

17 Q So we've had some testimony from people who produce movies
18 where the actor -- the producer actually sees the actor and
19 then can compare the photo to the person who's presenting it so
20 they have a reasonably good idea if it's the same person in the
21 photo ID. You understand that?

22 A Yes.

23 Q Now, you don't do that. You just ask for the person to
24 send a photo, send a photo ID.

25 A Yes.

1 Q All right. But you don't know if the person who actually
2 sent it in is, in fact, the same person who's represented in
3 the photo ID.

4 A Oh, no. No.

5 Q You're taking their word for it.

6 A Well, I guess. I mean, we're a global brand. We're in
7 every -- the site is in every country in the world.

8 Q Right.

9 A So it's like a global audience. So there's really no way
10 for us to have each person come and meet with us. It's a
11 totally --

12 Q No. I understand --

13 A -- different than video. Yeah.

14 Q But even if somebody was in New York City, you wouldn't
15 require them to come to you in person. You would take their
16 photo and their representation that this is -- I'm -- let's say
17 it's John Smith. I'm John Smith, and they present to you a
18 driver's license with John Smith and a --

19 A Sure.

20 Q -- birth date showing they're at least 18. That would be
21 sufficient.

22 A Well, yeah. Kind of like buying an airline ticket. You
23 know what I mean? That's kind of the same thing until you show
24 up. I get that there's a second.

25 Q Right. Right. Okay. Now, you don't require -- you'll

1 take -- will you take any kind of photo ID or does it have to
2 be --

3 A It has to be, you know, a passport or a license --

4 Q Like a --

5 A -- or a State --

6 Q -- Government issued --

7 A Yes.

8 Q -- ID?

9 A Absolutely.

10 Q Okay. All right. Now, do you -- do you personally
11 approve of -- this is a personal thought. Do you personally
12 approve of the concept that your photos should be limited to be
13 people 18 or older?

14 A Yes. No. I mean, we are not about minors. We're a sex
15 positive brand.

16 Q Okay.

17 A I have no problem with that.

18 Q All right. And you've heard -- you -- maybe you were in
19 the courtroom when the last witness testified. I asked some
20 questions about it. So you're aware at least from the Popular
21 Press that there are a lot of young people under the age of 18
22 who appear to be engaging in sexual activity --

23 A Yes.

24 Q -- is that correct? All right. But you are in favor of
25 laws, whether they're local, State, or Federal, that do not --

1 that prohibit depicting children under age 18 in explicitly
2 sexual activity, is that correct?

3 A Correct.

4 Q Okay. All right. Now, do you -- now, in -- in this
5 question, I might -- if you want to call upon your legal
6 training to answer it, you may, but I'd just like your views on
7 this issue.

8 To the extent that the -- I'd like you to divide this
9 law into two parts. One is the requirement that a person who's
10 going to be depicted in a sexually explicit photograph present
11 proof of their age to the producer, whoever is going to do it,
12 as you do now.

13 A Yeah. Of course.

14 Q All right? As question number one, and question number
15 two is whether you see any -- whether you think that in and of
16 itself is burdensome on a producer as opposed to the
17 regulations about keeping the photographs, maintaining records,
18 and the cross-referencing, and the possibility of a search
19 without a warrant. Do you understand my question?

20 A Yeah. I do, and I have no problem with complying with
21 2257 when we produce a film and keeping the records. I don't
22 think it's burdensome at all. I comply with it. People in the
23 industry we know comply with it.

24 I think the issue becomes when -- it becomes like all
25 this red tape, and then there are a change in regulations. You

1 don't know what to do, and no one wants to go to jail, you
2 know, and so it's not clear, and then it becomes it has to be
3 this many feet from the door, and it can quiet free speech, and
4 I just feel as an educator, the reason why we're so into having
5 these images of the genitals, because when you make it have to
6 comply with 2257, then you can -- you're limited to adult
7 talent, and adult talent, it's entertainment and they're
8 performers. It's like, you know, looking at a fashion magazine
9 and all women look like that. No. That's a specific segment
10 of the population, and that's a specific thing.

11 So as an educator, I feel like my hands are bound,
12 because now that means I'll have to only have adult stars that
13 I'm working with that I have the records and complying, because
14 they know the game and it's easy, and because of that, now I
15 have every image look the same instead of showing different
16 races, different labia styles.

17 So that -- to the second half, I think it is
18 burdensome in the --

19 Q You mean with the second half being the second part of my
20 question.

21 A Yes.

22 Q All right. So you don't find it burdensome to require
23 somebody who wants their genitals to appear in any of your
24 websites or the other things you produce --

25 A I have no problem with the films. With this specific

Ross - The Court/Redirect (Mur)

191

1 Genital Art Gallery, there's an issue with it, because it's not
2 someone's face. You know, it's just an image of their
3 genitals, and I --

4 Q Well, but you do have an issue with 2257 as to that or you
5 don't?

6 A As it regulates the Genital Art Gallery and lascivious
7 genitals, I do have a problem with it, because I think as an
8 educator, we need to look at real images of real genitals.

9 Q All right. Because the -- because there, you're not
10 depicting anyone's face. It's just the genitals.

11 A Yes.

12 Q All right. But you don't think it's burdensome for a
13 movie producer to require an actor to present their proof of
14 age?

15 A No.

16 THE COURT: All right. Thank you. All right.
17 Redirect?

18 MR. MURRAY: Yes. Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. MURRAY:

21 Q And following up on the Court's question, the problem with
22 2257 and 2257(a) as it applies to the Genital Art Gallery is
23 what with respect to whether you're getting any submissions?

24 A Well, yeah. It's quieted free speech. People don't
25 submit. We don't get them. So we have this older archive, but

1 you kind of want to keep your project going. You know what I
2 mean? You want to have more and more people submitting.

3 Q And why won't people submit photo ID when they're
4 submitting just a picture of their genitals?

5 A Because I can link their name to the genitals, which means
6 I have their face. In the age of social media, I think
7 everyone is kind of scared that -- you know, I mean, we've had
8 people, like friends that made submission. You know, one of my
9 bloggers works at NASA, and he's deathly afraid that someone
10 will find out that, you know, that's him, because I think that,
11 you know, you're afraid of getting fired, or if you're a
12 teacher or any of these, you know, industries, it's just hard.
13 There's a threat. I think there's a risk.

14 Q Now, you were asked on cross-examination whether it is
15 true that you cannot always tell the age of a person just by
16 looking at that person.

17 A Correct.

18 Q You recall that?

19 A Yes.

20 Q Can you generally tell for most people just by looking at
21 them whether they're over the age of 18, whether they're of the
22 age of majority?

23 A I believe so. Yes.

24 Q Okay. Is there anybody in this courtroom, for example,
25 that just by looking at them, you think you would confuse as

Ross - Dodson - Direct (Mur)

193

1 someone under the age of 18?

2 A I think everyone here is -- well, maybe. Sorry. You look
3 kind of young and the woman in the back looks kind of young,
4 but everyone else looks of majority and clearly older to me.

5 Q Is it your -- if someone is over the age of 25, do you
6 think you can generally just by looking at the person tell
7 whether they're a minor or over the age of majority?

8 A I believe so.

9 MR. MURRAY: Okay. Thank you, Your Honor. That's
10 all I have.

11 THE COURT: Recross?

12 MR. BLADUELL: No, Your Honor.

13 THE COURT: All right. Thank you very much.

14 THE WITNESS: Thank you.

15 THE COURT: Next witness, please.

16 MR. MURRAY: Your Honor, the plaintiffs at this time
17 would call the plaintiff, Betty Dodson.

18 THE COURT: Okay.

19 THE CLERK: Raise your right hand.

20 BETTY DODSON, PLAINTIFF'S WITNESS, SWORN

21 THE CLERK: Please be seated. Please state your full
22 name and spell your last name for the record.

23 THE WITNESS: Betty Dodson, D-O-D-S-O-N.

24 THE COURT: Go ahead.

25 DIRECT EXAMINATION

Dodson - Direct (Mur)

194

1 BY MR. MURRAY:

2 Q Ms. Dodson, what city do you live in? What city do you
3 live in?

4 A New York City.

5 THE COURT: Pull the microphone right in front of
6 your mouth, please. Thank you.

7 THE WITNESS: You're welcome.

8 BY MR. MURRAY:

9 Q And tell the Court what your profession is and has been
10 over the years.

11 A Well, I started out as a fine artist. I had a career -- a
12 full career in fine art, and then I segued to sex education as
13 a feminist.

14 Q And what kind of fine art did you create?

15 A Classical. Classical nudes, renaissance.

16 Q And then that segued into becoming a sex educator, you
17 said?

18 A Exact -- yeah. Correct.

19 Q And how long have you been a sex educator?

20 A Since the '70s.

21 Q Okay. And how old are you now?

22 A Eight-four.

23 Q Okay. And so how -- for how many years have you been a
24 sex educator?

25 A I can't count, but since -- you know, 70, 80, 90, to, you

1 know, 2013.

2 Q Okay.

3 A Anyone got a calculator?

4 Q And why don't you describe for the Court what your career
5 has been, what kinds of things you've done as a sex educator
6 over the past quarter of a century.

7 A To segue from fine art to teaching about sex was basically
8 done with workshops, and I use what they call the consciousness
9 raising format of the feminist movement. I'd had a lot of
10 sexual experiences thanks to the revolution. We had a sexual
11 revolution in this country. People have forgotten evidently,
12 but it was very open and very -- very safe and very
13 enlightening, and I would say the bulk of my information is
14 based on experience versus reading books. It's hard to learn
15 about sex by reading a book. It's better to do it.

16 So I had women get together, and this is the
17 consciousness raising format, and we would sit in a circle and
18 we would share our stories, in other words, whatever what was
19 going on our life, first person. The personal was -- it turned
20 out the personal was very political. It wasn't just my
21 problem. It was -- we all had the same problem.

22 Q Okay. And in addition to workshops, what did you do?

23 A That was basically it. I mean, that was -- I did that for
24 many years, and then later on, I started doing -- well, then I
25 went to -- then I got a degree in sexology.

1 Q Okay. And then did you then move into the area of doing
2 videos?

3 A Yes. I -- first I wrote books, and then I segued over to
4 -- because in order to teach anything, you really need a
5 visual, and it's true. A picture is worth a thousand words.
6 So from the visual, I then started writing, and my books
7 combined art, writing and words. So I learned to write, and I
8 have a book that's actually international best seller on the
9 marketplace to this day.

10 Q What's it called?

11 A Sex for One.

12 Q And what --

13 A My expertise is masturbation. No one talked about it. No
14 one wanted to deal with it. It's something most everyone does,
15 but we don't acknowledge it, and I believe that it is the
16 foundation for all of human sexual activity.

17 Q And when did you author that book? How long has that book
18 been in publication?

19 A Well, first, I did it in 1974, and then a mass marketer
20 took it over in 1986.

21 Q Okay.

22 A And then it was all over, and then it had many, many
23 foreign countries, lots of foreign editions. I lost count.

24 Q Okay. Have you authored other books or articles?

25 A Oh, many. Yes.

1 Q Can you give us some additional examples that come to
2 mind?

3 A The next book was Orgasms for Two to help people have
4 partner sex that was mutually orgasmic. Unfortunately, we're
5 still using the male model of sexual response for women, and it
6 doesn't work for us.

7 Q Ok. And what other books have you authored?

8 A Those two, and then many -- of course, many articles.

9 Q And where have your articles been published? What kinds
10 of places?

11 A Women's magazines, men's magazines. I mean, I could -- I
12 could go and look for the list, but it's many, many magazines.
13 It's any magazine that would publish an article about sex.

14 Q Okay. And have you spoken? Have you -- do you have
15 speaking engagements?

16 A Yes. Yes. I have lectured frequently.

17 Q And where have you traveled to lecture?

18 A Well, I'm very popular in Scandinavia. As advanced as
19 they are, they still want my information.

20 Q Okay. And across the United States, have you given
21 lectures?

22 A Yes. Yes, I have. I've been -- I run workshops, and I've
23 lectured in New York, Chicago, L.A., San Francisco. I even
24 stopped off in Wichita, which is my home town, and shook things
25 up a little.

1 Q And did you then begin producing sexually explicit videos
2 as a teaching mechanism?

3 A Yes, I did.

4 Q And when did you begin that approximately?

5 A That was in the '90s.

6 Q Okay. And what kind of videos -- we've seen some in
7 evidence, but why don't -- from your perspective, what kind of
8 videos did you create?

9 A The first one I did was to document the -- the workshop.
10 I called it The Body Sex Workshop, and that was the Self Loving
11 video I saw you looking at.

12 Q Okay.

13 A And that was just documenting something I had been doing
14 for years.

15 Q And what was the educational message of that video?

16 A That was once again, the format of the feminist movement,
17 sitting in a circle, consciousness raising, and I added nudity
18 to it, because everybody has terrible, terrible body images.
19 We all think there's something very wrong with us, and this is
20 a very serious problem for women. In order for them to be
21 sexual or to enjoy their bodies, they have to learn to like
22 them.

23 So we would find out when we would sit in the circle
24 and everybody was nude, that we all were beautiful in one form
25 or another, and I knew that from fine art, from looking at

1 nudes, drawing the nude. The nude body is extraordinary.

2 Q Okay. And then what other videos did you produce after
3 that first one?

4 A Oh, darling, give me a hand here, because I'm old and it's
5 hard to remember.

6 Q Okay. Well, generally speaking, why don't you describe
7 what the educational aspects were of the collection of videos.

8 A It's basically the same thing. It's accepting your body,
9 accepting your genitals, learning to have an orgasm first with
10 yourself so that you have something to share with a partner. I
11 mean, men are well meaning and all that, but they really don't
12 know how we function, and you have to find out from the woman
13 what she prefers, but if she's never touched her own body, she
14 doesn't know. So this is how I teach basic.

15 Q Okay. Now, you're familiar with 2257, the statute, 2257?

16 A Oh, are you kidding? I'd like to forget it.

17 Q And do you collect IDs in connection with --

18 A Yeah. Yeah.

19 Q -- your videos?

20 A Yeah. Of course I did.

21 Q And do you maintain them in your residence?

22 A Yes.

23 Q And is -- where are the videos produced?

24 A In my -- in my apartment. That's where I do my
25 productions. That's where I have done my workshops. When I

1 was an artist, I had a studio someplace else.

2 Q Now, I want to ask you about the website that you have,
3 and on it, I want to ask you about the Genital Art Gallery.

4 A Yeah. I consider that a research project.

5 Q Tell the Court about how that Genital Art Gallery came
6 into being, what its purpose is.

7 A Well, the purpose is always -- of course, I knew that the
8 women all thought they were genitally deformed. This is a very
9 personal thing for me. I thought I was genitally deformed
10 until I was 35 years old. Now, that's a serious handicap for
11 any woman to live through, and then I was struggling to have an
12 orgasm with partner sex, because I thought it had to be
13 vaginal. We're still stuck in the dark ages when it comes to
14 female sexuality, and I'm sick of it and I'm going to fight it
15 until I -- last breath. Eight-four, I'm just getting started.

16 Q So tell us about the purpose of the Genital Art Gallery
17 though.

18 A It's to let people know there is a vast variety of
19 appearances for both vulvas and penises. I now know that the
20 young men have as many problems as the young women, thinking
21 that their dicks are not big enough.

22 Q Okay. And so the idea was to have these images posted so
23 that there would be a variety for people to see?

24 A Absolutely, and I also invited people to talk about their
25 first sexual experience, the first time they masturbated, and

1 any information that they wanted to share.

2 Q Okay. And you're familiar with the fact that in about
3 2009, the law changed to require the collection of photo IDs
4 for both --

5 A It -- it ended the gallery. It was over, because the
6 whole point was anonymity. I mean, if some guy is -- you know,
7 is the head of a company or he's an educator or his wife
8 doesn't know he -- you know, he took a picture of his -- of his
9 dick and he wants to send it to me because it's thrilling for
10 him to display his genitals and to find out that he, indeed, is
11 normal. Ha ha ha ha. So he doesn't want to give me his
12 driver's license.

13 Q And so what has happened to the Genital Art --

14 A It's -- it's finished as far as I'm concerned.

15 MR. MURRAY: Okay. Thank you very much. That's all
16 I have.

17 THE COURT: All right. Cross, please.

18 THE WITNESS: I just want you to know that I've been
19 at a terrible disadvantage throughout this whole thing, because
20 my new hearing aids were not working and David loaned me his,
21 and now I can hear. I have no idea what's gone on beforehand.
22 So --

23 THE COURT: Well, you can --

24 THE WITNESS: -- take it away.

25 THE COURT: You can sit in the jury box if that will

Dodson - Cross (Sch)

202

1 help you hear better.

2 THE WITNESS: The who?

3 THE COURT: In those seats over there if that will --
4 if that will help you hear better.

5 THE WITNESS: Oh, really?

6 THE COURT: Yeah.

7 THE WITNESS: I didn't know that.

8 THE COURT: Well, now you know.

9 THE WITNESS: Now you tell me.

10 THE COURT: All right. I didn't know you couldn't
11 hear. All right. Go ahead.

12 THE WITNESS: Okay.

13 CROSS-EXAMINATION

14 BY MR. SCHWARTZ:

15 Q Good afternoon, Ms. Dodson.

16 A Hi.

17 Q You testified that you have a website called
18 dodsonross.com, correct?

19 A Correct.

20 Q And you provided the Government with the username to -- to
21 access this website, correct?

22 A Say it again.

23 Q You provided the Government with the username so that we
24 could access this website.

25 A Yes. Yes.

Dodson - Cross (Sch)

203

1 Q And you also provided the Government with a password to
2 access the website.

3 A Yeah, and I hate those things. I can never -- I always
4 forget them. I hope at some point we let go of that.

5 Q So, Ms. Dodson, I'd like to show you a binder of documents
6 that are marked as Defendant's Exhibit 44.

7 MR. SCHWARTZ: Your Honor, if I may approach the
8 witness with the binder?

9 THE COURT: Yes.

10 A 44? It's a blank page, honey.

11 BY MR. SCHWARTZ:

12 Q So, Ms. Dodson, behind the tab that's labeled 44 are a
13 number of screen shots from dodsonross.com.

14 A I have no idea what you're talking about. Oh. Screen
15 shots. Cute.

16 Q So each screen shot is individually labeled by letter, and
17 if you can just take a minute to go through all of the letters
18 that are behind number 44.

19 A You'll have to come up here and point. I have no idea
20 what you're dealing with here. Oh, this is part of the
21 gallery.

22 Q Yeah. There's one shot per tab, per letter tab, if that
23 makes sense.

24 A You're going to go through the whole gallery?

25 Q There's just --

1 A Ooh. Oh, it's been so long since I've seen it.

2 Q Well, I'd just like you to take a look at the -- at the
3 exhibits with the letter tabs behind number 44, and just let me
4 know if you recognize the documents.

5 A I have to go back. Oh, and I think I have three peni
6 here.

7 Q So if you -- if you could keep going --

8 A More? Turn --

9 Q -- to the next one.

10 A This is weird. Oh, that's a bad shot. I can't tell what
11 it is.

12 Q But that image -- that image is from dodsonross.com,
13 correct?

14 A Evidently. It's a very poor photograph.

15 Q And if you could keep going through the letter tabs, Ms.
16 Dodson --

17 A Oh.

18 Q -- and just let me know if you --

19 A Okay. You want me to keep going?

20 Q Yes, please.

21 A I'm revisiting the gallery. You know, since this 2257
22 came up, I just don't go there anymore. Well, you can't even
23 tell what that is. Do you want me to keep going?

24 Q Yes, please, all the way until you get to number 45.

25 A You've got a lot of tabs here, kid. That's all grainy.

1 Can't see what that is. This is better. You know, it's
2 interesting. The penises are always better than the vulvas.
3 They're -- they're easier to photograph. We're very
4 complicated, women. I have no idea what this is.

5 I mean, these are not professional photographers.
6 These are people photographing themselves. Okay. Same guy,
7 three shots, happy, penis, happy life. That's not a bad
8 slogan, happy penis, happy life. Ours is better orgasms,
9 better world.

10 Is that enough?

11 Q Are you to number 45?

12 A Oh, honey, you don't want me to go through all of these,
13 do you?

14 Q I just want to make sure they're from your website.

15 A Is there something specific you have in mind?

16 Q If any one looks like it's not from your website.

17 A And they're such little images. Are we at the page you
18 were looking for?

19 Q Yeah. I believe -- I believe we're through all of them.
20 So, Ms. Dodson, those are all images from dodsonross.com,
21 correct?

22 A Well, yeah. It says so.

23 Q Okay.

24 A I'm hard pressed to see them given my visual difficulties.
25 These are so little. I'd have to have a magnifying glass.

1 Q And Ms. Dodson, as we heard earlier, the Genital Art
2 Gallery contains depictions of genitals only, correct?

3 A Pardon?

4 Q The Genital Art Gallery, it contains images only of
5 genitals, correct?

6 A Yes.

7 Q So there are no faces shown, correct?

8 A Nothing. No.

9 Q And, in fact, in your essay guidelines for the gallery,
10 you instruct people to take pictures only of their genitals --

11 A Yes.

12 Q -- and maybe their hands.

13 A Well, yes. A woman has to separate her outer lips so you
14 can see what's inside.

15 Q But you do not instruct people to show images of -- of
16 their faces.

17 A No.

18 Q And Ms. Dodson, your main concern about complying with
19 2257 is how it will affect the Genital Art Gallery, correct?

20 A Well, yeah, because people aren't submitting anymore.

21 Q And you've mentioned that you've also produced videos and
22 DVDs with sexually explicit conduct, right?

23 A Yes.

24 Q But you no longer produce these videos, right?

25 A No. We've done -- we did one. I'm -- you know, I'm kind

1 of out of that business now. Everything is going to be online.
2 I'm not going to be doing DVDs. It's an old technology. It's
3 finished, gone, over with.

4 Q So your decision to no longer produce videos and DVDs has
5 nothing to do with 2257, correct?

6 A It has nothing to do with 22 -- it's just a dead medium.

7 Q And Ms. Dodson, on your website, there's also a sex shop,
8 correct?

9 A Yes.

10 Q And this is where you sell sex toys, books, and videos?

11 A Uh-huh.

12 Q And people can pay to purchase these products?

13 A Yes, they can.

14 Q And your website also has a section called Ask Betty,
15 correct?

16 A Yes.

17 Q And that --

18 A My favorite.

19 Q That's where people can write into you with questions.

20 A Yes. I do ten to 20 questions a day. It's my -- I can't
21 help myself. I just -- these kids are out there lost. Lost.
22 They don't have any idea where to turn other than porn, which
23 is entertainment for men. It has very little to do with women.
24 So they -- these young women all want to know am I having an
25 orgasm, how can I tell, what is it like.

1 Q And so you write responses when people write in with
2 questions.

3 A Yes, I -- I do.

4 Q And then you post both the questions and answers to your
5 website.

6 A Some of them. Not all of them.

7 Q And when you write responses for the Ask Betty feature,
8 sometimes you encourage people to go to the sex shop and buy a
9 particular product, right?

10 A Yeah.

11 Q And sometimes you provide -- sometimes you provide a
12 direct link to the particular item in the sex shop in your
13 response in the column?

14 A I don't think -- no. Not -- I would just say check it
15 out, go to -- go to the, you know, sex store, the shop online.

16 Q And people have written you -- written you with questions
17 about sex who say they are 17 years old, correct?

18 A I don't understand.

19 Q Some of the people who have written to you with a question
20 for the Ask Betty column, they've said that they're -- in their
21 letter, they'll say that they're 17 years old, correct?

22 A Not always. Some of them --

23 Q There have been some who have said they're 17?

24 A Not that I recall.

25 Q Okay.

Dodson - Cross (Sch)

209

1 A Eighteen, 20, 30. People don't mention their names -- age
2 always.

3 Q And Ms. Dodson, I'd like you to now review the documents
4 in the binder that are behind the tab 45, and again, these are
5 followed by -- each image has a letter tab.

6 A Oh, these are the Q&A. All right. I'm here. This is too
7 little. I can't read the type.

8 Q I just want to make sure that each one is from your
9 website. So if you can just go to each one.

10 A I don't think you'd try to trick me. If you say it's from
11 my website, it is.

12 Q I just want you to verify it.

13 A Okay. That's a very common one. Yeah. Yep. Is this a
14 great website or what? Oh, come on. You should be reading
15 this, everybody. Can I say what you're looking at? Yeah.
16 Yeah. Yeah. That's from the web -- definitely from the
17 website.

18 Q So, Ms. Dodson, you recognize all those images to be from
19 your website, correct?

20 A Absolutely.

21 Q Ms. Dodson, it can be difficult to tell the exact age of a
22 person just by looking at them, correct?

23 A Say it slower.

24 Q Sure. It can be difficult to tell the exact age of
25 someone just by looking at them, right?

1 A Yeah.

2 Q And some --

3 A You would never think I'm 84.

4 Q Some people look younger than what -- what their real age
5 is, correct?

6 A And they look older than what their real age is. Yes.

7 Q And sometimes people can do things to their body like have
8 cosmetic surgery that might also affect the way that they look,
9 correct?

10 A Yes.

11 Q So, for example, one thing a woman might do to her vagina
12 is surgically remove the inner lips, correct?

13 A Oh, that -- we're against that. That's ridiculous.

14 Q And this procedure is called the clam shell look?

15 A Well, that seems to be the preference.

16 Q And another thing a woman might do is bleach her anus,
17 right? Bleach her anus?

18 A Yes. That's terrible.

19 Q A woman might also dye her anus?

20 A This is mostly done in the porn industry. This is not
21 done regularly. Regular women don't do this.

22 Q A woman might also remove pubic hair, correct?

23 A Yeah. They're into that definitely.

24 Q And they might remove moles.

25 A Remove --

Dodson - Cross (Sch)

211

1 Q Moles.

2 A Moles? Yes.

3 Q Stretch marks?

4 A Yes.

5 Q And the purpose of all these procedures is to make a woman
6 look younger in appearance, correct?

7 A Evidently.

8 Q And, Ms. Dodson, you have no special expertise in
9 determining a person's age based on visual observation, right?

10 A No. Well, other than years and years of experience.

11 MR. SCHWARTZ: Okay. No further questions.

12 THE COURT: Redirect?

13 MR. MURRAY: No, Your Honor. Thank you.

14 THE COURT: Thank you very much. You're excused.

15 All right. We'll take a ten-minute recess.

16 THE WITNESS: Is that it?

17 THE COURT: I'd like to go to quarter of 5:00 if
18 possible. Thank you. All right.

19 MR. MURRAY: We're actually moving very, very
20 quickly, Your Honor. We may -- we could run out of witnesses.
21 We're going to finish much sooner than we anticipate.

22 THE COURT: I'm not --

23 MR. MURRAY: I hope that makes you happy.

24 THE COURT: I'm not -- well, I want to give everybody
25 time to present their case. Well, do you have another witness?

Colloquy

212

1 MR. MURRAY: Yes. Yes.

2 THE COURT: All right. How many more do you have for
3 this afternoon?

4 MR. MURRAY: I have two that I can call still today.

5 THE COURT: All right. Well, okay. Let's see where
6 we are. Do you have any depositions to read or -- where do we
7 stand on that issue?

8 MR. MURRAY: Only on the -- we have -- we have asked
9 the Government to identify whether it will adhere to its
10 objections in the Agent Joyner (phonetic) deposition or not,
11 and we're waiting to -- to hear back from them.

12 THE COURT: Okay. All right. But you intend to
13 introduce the whole deposition --

14 MR. MURRAY: I do, Your Honor.

15 THE COURT: -- subject to any objection.

16 MR. MURRAY: Yes.

17 MS. WYER: Wait.

18 THE COURT: All right. I'm not --

19 MS. WYER: I didn't hear what was going on, Your
20 Honor.

21 THE COURT: I asked where we stand on the deposition
22 that the plaintiffs want to introduce of Agent Joyner, and Mr.
23 Murray said he was waiting to hear back about your objections,
24 but I'm happy for you -- I'm glad you are having a discussion
25 about it, but I'm -- you know, part of my job is ruling on

Colloquy

213

1 objections. So if you can't agree, we can move it into
2 evidence, and we can go over the objections one by one, and
3 I'll rule as we go along. I don't see a need to read the
4 entire deposition into the record. We'll just introduce it.

5 MR. MURRAY: No, Your Honor. I was just going to
6 submit it, and you can read it at your -- at your convenience.

7 THE COURT: Well, but subject to any --

8 MR. MURRAY: Yes.

9 THE COURT: I want to have a ruling on objections.
10 Yes. Yes. Ms. Wyer?

11 MS. WYER: Your Honor, I have some additional
12 authorities regarding introducing an entire deposition
13 designation when a witness is going to be present at the trial.

14 THE COURT: All right. Can you give me -- can you
15 write the citations down on a piece of paper and give them to
16 me?

17 MS. WYER: Yes.

18 THE COURT: All right. Well, when I come back, why
19 don't you do that. Okay? And we'll consider that.

20 All right. Well, are you -- when -- well, since
21 you're saying you're moving along, do you have any estimate now
22 of when -- as to when you would rest?

23 MR. MURRAY: Yes, Your Honor. We think we can finish
24 with all but one witness who we've -- who's scheduled for
25 Friday. We think we should finish tomorrow some time.

Colloquy

214

1 THE COURT: All right. Well, then I'd like the
2 Government to be prepared to start your testimony on Thursday.

3 MS. WYER: Your Honor, we -- we have scheduled all --
4 the travel of our witnesses, and we were not planning to have
5 them ready until the first one appearing on Friday.

6 THE COURT: All right. Here's --

7 MS. WYER: It's very difficult. There are people
8 coming from California, from Houston. It's very difficult to
9 find hotel reservations here in Philadelphia, Your Honor.

10 THE COURT: Well, I can understand that. I don't
11 want to make it difficult for anybody. Do you have any
12 witnesses coming from Washington? They could certainly come up
13 tomorrow so they could testify on Thursday.

14 MS. WYER: We don't, Your Honor. Everyone is coming
15 from -- there are some on the east coast, but I --

16 THE COURT: Well, look, I don't want -- what I'd like
17 you to do is think about your team. Mr. Murray says they're
18 going to rest tomorrow. Now, you have a couple experts to
19 testify as --

20 MR. MURRAY: Yes.

21 THE COURT: One of them is on Friday, correct?

22 MR. MURRAY: No. I -- we have one more plaintiff who
23 we had scheduled for Friday morning who's coming in Thursday
24 night.

25 THE COURT: Okay.

Colloquy

215

1 MR. MURRAY: And we were going to do one of their
2 experts on Friday out of order.

3 THE COURT: Right.

4 MR. MURRAY: We -- and then next week, we were going
5 to do two of my experts while they -- at the same -- during
6 their case.

7 MS. WYER: Your Honor, I mean, as -- as I think
8 plaintiff's counsel is indicating, they are actually not
9 resting tomorrow, because they have three other witnesses that
10 they're planning to put later --

11 THE COURT: Right.

12 MS. WYER: -- for their own convenience.

13 THE COURT: You're absolutely right about that. I'm
14 just trying to keep things moving. What I'd like your team to
15 do in view of what Mr. Murray just said about moving very
16 quickly is to see if -- I don't want to lose a whole day this
17 week that we could have testimony. So I would really like to
18 see if you could possibly call some of your witnesses and tell
19 them the Judge would like them to be here Thursday. I don't
20 want anybody to have a heart attack or to lose their job or to
21 lose their marriage, but if some people who are scheduled to
22 come next week could come on Thursday, I think that would be a
23 very good idea, and I would appreciate it.

24 So just make -- just discuss it and think about it.
25 I would appreciate it.

Colloquy

216

1 I'm aware you're both going to be taking witnesses
2 out of order. That's not unusual. In a jury trial -- in a
3 nonjury trial, it happens all the time. So that's never a
4 problem.

5 Let me just say Thursday, however, we're going to
6 start a little bit late, because I have proceedings in another
7 case that will take from 9:00 to 10:00. So -- from 9:30 to
8 10:00 or possibly 10:15. So we'll have a little late start on
9 Thursday.

10 On Friday, I have a personal commitment that I'm
11 going to have to be out from like 11:45 until at least 2:00,
12 maybe 2:15 or 2:30. So unfortunately, it's going to be two
13 hours out in the middle of the day, but I'll still have all the
14 morning and the rest of the afternoon.

15 I don't know -- as you may recall, when we changed
16 the schedule, I told you I was going to start a jury trial on
17 Monday that I thought would only take two days. That case may
18 take two and a half to three days. So we may lose next
19 Wednesday as a trial day or part of it. I don't know yet. I'm
20 not sure I'll know for sure until it happens. It's a very
21 contentious jury trial. On the other hand, it could settle and
22 go away, but I -- at the moment, it's still on.

23 So those are some of the reasons why I would like to
24 fill Thursday with some trial testimony. Okay? So just see
25 what you can do, and we'll talk about it when we're done with

Alper - Direct (Mur)

217

1 the other witnesses. So I'll be back in ten minutes, and then
2 we'll go until quarter of 5:00 or until your two witnesses are
3 done.

4 All right. Thank you.

5 MR. MURRAY: Thank you.

6 (Recess taken, 3:14 p.m. to 3:30 p.m.)

7 THE COURT: Okay. Next witness, please.

8 MR. MURRAY: Yes, Your Honor. At this time, the
9 plaintiffs would call the plaintiff, Barbara Alper.

10 THE CLERK: Raise your right hand.

11 BARBARA ALPER, PLAINTIFF'S WITNESS, SWORN

12 THE CLERK: Please be seated. Please state your full
13 name and spell your last name for the record.

14 THE WITNESS: Barbara Alper. Last name, A-L-P-E-R.

15 DIRECT EXAMINATION

16 BY MR. MURRAY:

17 Q Ms. Alper, tell the Court what your profession is.

18 A I'm a professional photo journalist. I work for different
19 publications. I've worked for the New York Times for ten
20 years. I worked for American Lawyer Magazine for ten years,
21 Los Angeles Times. I work with Newsday, for example.

22 Q Please hold the microphone close to you.

23 A Okay. Is this better?

24 Q Yes. That's fine. And what is your -- where do you work
25 out of? Your home or do you have an office?

Alper - Direct (Mur)

218

1 A I work out of my home office.

2 Q And what is your educational background?

3 A I have a Bachelors degree in social work from Michigan
4 State University, and I studied photography at MIT in Boston.

5 Q And what years were you studying photography at MIT?

6 A 1975, '76.

7 Q Okay. And what year did you graduate from Michigan State?

8 A 1971.

9 Q Okay. And how old are you?

10 A Sixty-three.

11 Q Okay. And for how many years have you been a
12 photographer?

13 A Over 30. Actually, closer to 35 years.

14 Q Okay. And could you tell the Court what kind of work
15 you've done? I know you've just described some of the
16 employers you've had, but tell the Court what kind of work
17 you've done over the years in your field.

18 A My work is pretty varied. My assignment work can range
19 anything from doing portraits, lawyer portraits, people. I
20 photograph food. I photograph gardens, fashion, and I also
21 have my own personal fine art projects. I do underwater
22 photography where I photograph people swimming with dolphins.
23 I did a series on the Gulf War in 1991, and I photographed -- I
24 photograph currently orchids, and I also photograph lifestyles
25 and sexual subcultures.

Alper - Direct (Mur)

219

1 Q Okay. and could you tell the Court some of the places
2 where your work has been exhibited?

3 A I've exhibited nationally and internationally. I've
4 exhibited at the New York Public Library. I've exhibited in
5 Finland, at the museum in Finland, at the -- I'm drawing a
6 blank -- at Finot galleries in France, Belgium, and Germany,
7 and at a major exhibition in Belgium, at Lehigh University, the
8 International Center of Photography in New York and -- and
9 galleries as well in New York, California. I also exhibited in
10 Sidney, Australia at the Australian Center of Photography, for
11 example. There's a longer list.

12 THE COURT: One second. One second.

13 THE WITNESS: Is it possible to get some water?
14 Empty.

15 MR. MURRAY: Yes.

16 THE COURT: Sarah, would you mind getting --

17 MR. MURRAY: No. I've got it, Judge.

18 THE COURT: Oh, are you? Thank you.

19 MR. MURRAY: I can -- I can do it.

20 THE WITNESS: Oh, great. That's good.

21 (Pause)

22 THE COURT: Go ahead. Sorry.

23 BY MR. MURRAY:

24 Q And, Ms. Alper, in addition to having exhibitions, do any
25 institutions have collections of your work?

Alper - Direct (Mur)

220

1 A My work is -- I think I left off the Victorian Albert
2 Museum in London also exhibited, and I'm in their collection.
3 I'm in the collection at the New York Public Library, the
4 Bibliothèque nationale in Paris, International Center of
5 Photography in New York. What am I leaving out? I know I've
6 got --

7 Q Those are examples?

8 A There is -- yeah. There is a longer list.

9 Q Have you published any books or catalogs?

10 A I have -- I'm in a book called public -- catalog book
11 called Desire that accompanied a show in Finland. I'm in a
12 book called Sex in New York City. I'm in David Steinberg's
13 book, Photo Sex, and I've published in Japan, recently in a
14 Chinese art magazine.

15 Q Okay. And tell the Court about your involvement with
16 sexually explicit images. What is that work?

17 A I photographed -- I'm -- as I said, I'm a photo journalist
18 and documentary photographer, and I photographed in clubs in
19 New York, in California, at the Safer Planet Sex Ball in
20 London, and in clubs and bars in Bangkok, Thailand.

21 Q Okay. And are some of those images of nudity and sexually
22 explicit?

23 A Yes.

24 Q And have any of that -- has any of that body of work been
25 collected by anyone?

Alper - Direct (Mur)

221

1 A Yes. The New York Public Library purchased 20 images from
2 that work, and the Bibliothèque nationale in Paris also has
3 purchased the work, and -- where else?

4 Q Okay. Those are examples?

5 A Yeah.

6 Q Now, in addition to -- to -- so explain what you mean by
7 taking images at club scenes. Let's talk about that in a
8 little bit more detail.

9 A There -- in the early '80s when I started this work, there
10 would be parties at S&M clubs, and then there would be parties
11 also at other -- there was a party at a disco called Danceteria
12 where they took over the top floor of -- of the club and had
13 parties, and I was invited to photograph --

14 Q Okay.

15 A -- at them.

16 Q And did you do so?

17 A I did.

18 Q And I want to show you what has been marked as Plaintiff's
19 Exhibit 43, and ask you if you can identify the photograph on
20 the first page of that document.

21 A Yes.

22 Q And tell the Court when that was taken and where.

23 A That was taken in 1981 at the Hellfire Club in New York.

24 Q And is that part of the body of work that you were talking
25 about?

Alper - Direct (Mur)

222

1 A Yes.

2 Q And what about the second page of Plaintiff's Exhibit 43?
3 Is that another image of yours?

4 A Yes, it is.

5 Q And would you explain that one?

6 A That was taken also at the Hellfire Club in New York.

7 Q And what was the purpose of your photographing these type
8 of images?

9 A I'm interested in sexual behavior, and I believe that
10 people have the right to be and do what they feel they are
11 comfortable with or what their drives are as long as they're
12 consenting adults and they're --

13 Q And was the purpose of this photograph informative,
14 educational, artistic? Among those categories, how would you
15 describe it?

16 A It -- I consider it part of my artistic body of work. It
17 is documentary. My work has always sort of crossed over into
18 different lines. So it's artistic, and it's documentary.

19 Q And then this next photograph, tell the Court about that.

20 A This was taken in Bangkok in a club.

21 Q And the next one?

22 A This was in New York at the Hellfire Club.

23 Q And the next one.

24 A This was at Danceteria.

25 Q And the next one.

Alper - Direct (Mur)

223

1 A That was taken in New York at a club called Lucky Cheng's,
2 and I was actually on assignment for a French magazine at the
3 time.

4 Q Now, were these depictions of people who you asked to pose
5 or were they just depictions of what you saw happen?

6 A No. No. This is all work of what I see happening. I
7 don't pose people.

8 Q And what -- what about this next photo?

9 A This was taken at a party at the Safer Planet Sex Ball in
10 London.

11 Q And what about this next one?

12 A At the Hellfire Club in New York.

13 Q And what about this one?

14 A I think that was taken at Danceteria. I'm not positive.

15 Q And this one?

16 A Hellfire Club.

17 Q Now, when you were visiting these clubs and taking these
18 pictures, did you go around collecting or checking IDs?

19 A No, I didn't, but I will say that at the -- when I was on
20 assignment for the French magazine at Lucky Cheng's, I had to
21 ask people's permission to photograph them while they were
22 doing what they were doing, but I was -- all these clubs are
23 adult only, and IDs are checked at the door in order to get
24 into the club to begin with.

25 Q And so did you seek permission or releases from the people

1 that you depicted in these documentary photographs?

2 A The only time I asked permission was at Lucky Cheng's.
3 Otherwise, I was allowed and invited to photograph. So I
4 didn't need to ask permission.

5 Q Do you have any interest, by the way, in filming any minor
6 engaged in sexually explicit activity?

7 A I have absolutely no interest in minors, and I'm totally
8 opposed to it.

9 Q Okay. Was there any doubt in your mind when you took
10 these photographs that the people that you were depicting were
11 adults?

12 A No. I had no doubt.

13 Q Now, in addition to this type of work, have you also
14 photographed or been asked to photograph couples?

15 A Yes. I also photograph couples making love as well as
16 individuals.

17 Q Okay. And --

18 A Excuse me.

19 Q -- when did you do that work, that type of work?

20 A I've done that throughout interspersed with my other work
21 over the years.

22 Q Okay. And are you familiar with the requirements of 2257?

23 A I am.

24 Q And are you familiar with the requirements of obtaining
25 photo identification if you're going to create an image of a

Alper - Direct (Mur)

225

1 sexually explicit nature?

2 A Yes, I am.

3 Q And how has that affected your work with respect to
4 photographing couples?

5 A It has seriously affected the work, because nobody wants
6 to give up their anonymity by having to have their ID
7 photographed and made available -- excuse me -- made available
8 to the -- for Government inspection.

9 Q Now, are you married?

10 A I am married.

11 Q And how long have you been married?

12 A I've been married since September.

13 Q Okay. And have you yourself taken any photographs of you
14 and your husband of a sexually explicit nature?

15 A Yes. I have photographed my husband and myself in
16 sexually explicit behavior.

17 Q And was that for your own private enjoyment and --

18 A Well, that's for -- that's -- I consider that also part of
19 my body of work. So yes. I would -- I've had it -- I've had
20 it published, and I would -- it's part of my body of work. It
21 also stems from part -- besides enjoying doing it, it's to fill
22 in where I have difficulty getting couples to allow me to
23 photograph them because of the restrictions of 2257.

24 Q And showing you then the remaining photographs in
25 Plaintiff's Exhibit 43. Would you identify that photograph?

Alper - Direct (Mur)

226

1 A Yes. That's my husband and myself.

2 Q And the next page?

3 A As well.

4 Q And the next page.

5 A That's also.

6 Q And are there others in the photo shoot that you took that
7 were not included in this?

8 A There are others in that shoot as well as other -- other
9 shoots that I've done.

10 Q Of you and your husband?

11 A Yes.

12 Q And have you done any of your husband alone?

13 A Yes.

14 Q And what kind of shoots have those been?

15 A Masturbation.

16 Q Okay.

17 A Nude.

18 Q Now, when you did those, did you need to check your photo
19 ID to figure out how old you and your husband were?

20 A I did not.

21 Q Now, is there another body of work that you would like to
22 do in New York City but have not been able to accomplish?

23 A Yes.

24 Q And would you tell the Court what that -- and would this
25 be in your capacity as a photo journalist, a documentary

Alper - Direct (Mur)

227

1 journalist, or an artistic photographer?

2 A All of the above.

3 Q Tell the Court what project you would like to do.

4 A There is a community of adult gay men who have anonymous
5 sex in public, out in -- outdoors, and because it's anonymous
6 sex, obviously, I can't be asking them for their IDs to be made
7 available to prove their age to the Government.

8 Q And where is this?

9 A This is -- there are different areas in New York. There's
10 one on Fire Island.

11 Q Okay. And -- and can you describe for the Court how this
12 -- how this came about that there is this area where that
13 activity occurs?

14 A There's -- one -- I've been going out to this area for 20
15 years, and there's an area between two communities. It's a --
16 the one community is primarily -- it's known as a gay -- the
17 gay area of Fire Island, and there is the dunes and there's the
18 woods, and people go out to meet other men and fool around.

19 Q And why do you want to photograph this as a photographer
20 and as a journalist?

21 A Because it's an area of sexual behavior that I find
22 interesting, and I think I want to document it.

23 Q And how does 2257 stand in the way of your documenting
24 this phenomenon?

25 A Well, they're having anonymous sex, and it makes it

Alper - Direct (Mur)

228

1 impossible for me to go up and ask them for photo IDs to keep
2 on record and make available to the Government if the
3 Government decided to come and inspect my records.

4 Q Now, is there any other body of work that you feel is
5 constrained by 2257? Any other body of work that you would
6 like to pursue?

7 A Additional photographing of couples.

8 Q Okay.

9 A That's the other.

10 Q All right. And is there a compilation --

11 A As well as -- as well as nudes and -- nudes.

12 Q Now, if you were to compile a book of the photographs that
13 you took in the '80s and early '90s, would you be able to get
14 photo IDs for the people depicted in them?

15 A That would be impossible --

16 Q Okay.

17 A -- to have to go back, one, to -- we're talking about
18 going back 30 years and/or going to London, San Francisco, or
19 Bangkok to try to find people, and even if I could find anyone,
20 I doubt that anyone would be willing to give their ID to,
21 again, you know, reveal who they are and give up their
22 anonymity. It's not --

23 Q And --

24 A My work isn't about the individual people and trying to
25 identify individual people. It's about behavior.

Alper - Direct (Mur)/The Court

229

1 Q And what is it about 2257 that you think implicates the
2 problem of collecting those IDs? What project would you pursue
3 that might be constrained by your inability to collect those
4 IDs?

5 A Well, I'm not quite sure of the question. I want to
6 publish a book of the -- my complete body of work, and so
7 combining work from pre-1995 with post-1995, my understanding
8 of the law means that I would have to go back and get IDs for
9 all the people pre-1995 in order to publish a complete
10 compilation of my work.

11 MR. MURRAY: Okay. Thank you. That's all I have,
12 Your Honor, other than to offer into evidence Plaintiff's
13 Exhibit 43.

14 THE COURT: All right. Let me just ask a question
15 and make sure I understand your testimony before the cross.
16 BY THE COURT:

17 Q You're interested it seem -- if I understand your
18 testimony, and at least part of your artistic work is being in
19 places where you can observe people in sexually explicit
20 conduct, is that correct?

21 A Yes.

22 Q They may be having intercourse or performing other kinds
23 of sexual acts with either members of the same sex or members
24 of the opposite sex, is that correct?

25 A Yes.

1 Q All right. And in this sense, that would be something
2 that you would probably not see in an everyday situation out on
3 the street or in the public -- in obviously public places. Is
4 that generally correct?

5 A Yes.

6 Q So you have to go to places where people are likely to be
7 performing those kind -- that kind of conduct such as these
8 clubs that you mentioned in New York City or in Bangkok or on
9 Fire Island, is that correct?

10 A Yes.

11 Q All right. Now, you also said that you have no interest
12 in photographing minors, correct?

13 A Yes.

14 Q All right. And is that because that's what the law is, or
15 personally, you don't view that as something that you don't
16 want to do or both or something else?

17 A I just -- I'm against it. I don't think it's right. It's
18 not only the law, but it's something that I don't feel right
19 about.

20 Q Okay. All right. Now, so when you go to these clubs or
21 other locations where people are engaged in this kind of
22 sexually explicit conduct, you don't -- as you testified, you
23 don't have any way to check their age, correct?

24 A Correct.

25 Q All right.

1 A The --

2 Q Now, but have you had situations where they could be under
3 18, just visually, it's -- it could be -- they're young
4 looking? I mean, did you ever have a situation where you
5 wanted to photograph somebody but there was a question in your
6 mind as to whether the -- one or more of the individuals was
7 under 18?

8 A No.

9 Q Why -- why -- how can you say that so definitively?

10 A One, because I'm photographing in clubs where IDs are
11 taken at the door, and you have to be over 18 in -- or maybe
12 even 21 because there's drinking to even be allowed into the
13 club. So they weren't allowing any minors in. So I would have
14 no reason to suspect that anybody was a minor.

15 Q Okay. Now, how about on Fire Island where you're out in
16 the open?

17 A This is an adult community. There aren't teenagers
18 walking around there.

19 Q Well, teenager is a loose term, because an 18 or 19-year-
20 old is a teenager --

21 A Correct.

22 Q -- by definition. I'm talking about under 18.

23 A Right.

24 Q So how -- I mean, how can you be so sure that none of the
25 people you want to photograph are under 18?

Alper - Cross (Swi)

232

1 A As I said, this is an adult community. There aren't
2 teenage -- there aren't younger -- the people that I know out
3 there are older. They're adults. I don't know any under 21
4 who are there, period.

5 THE COURT: All right. All right. Cross-examine.

6 CROSS-EXAMINATION

7 BY MR. SWINTON:

8 Q Good afternoon, Ms. Alper.

9 A Good afternoon.

10 Q Wanted to follow up on the Court's questioning and ask you
11 a few questions about the Fire Island images you talked about
12 before, the images you'd like to take on Fire Island. This
13 place that you described as being a location where anonymous
14 sex is taking place, there isn't a fence around it, correct?

15 A Correct.

16 Q And it isn't like the S&M clubs that you were discussing
17 earlier, right? Like there's not a bouncer.

18 A Correct. I mean, you have to take a ferry to get to the
19 island.

20 Q But there's not someone at some sort of entrance --

21 A No.

22 Q -- checking IDs.

23 A No.

24 Q And your belief is that the only reason people are having
25 anonymous sex won't allow you to take their picture is because

Alper - Cross (Swi)

233

1 they don't want to give you valid photo identification?

2 A Can you --

3 Q Is it your belief that the only reason people who are at
4 this location having anonymous sex wouldn't want you to take
5 their picture is because they don't want to provide you with
6 valid photo identification?

7 A Yes, and because they want to remain anonymous.

8 Q And you've actually never asked anybody having anonymous
9 sex on Fire Island if you could take their picture, correct?

10 A I know enough people there who participate in the
11 anonymous sex to know that this would absolutely be forbidden.

12 Q So the answer to my question is no?

13 A And your question was?

14 Q You never actually asked anybody having anonymous sex if
15 you could take their picture?

16 A I have talked to people who have participated in anonymous
17 sex and know that they will not allow me -- they won't show
18 their ID to have it photographed by me.

19 Q And, Ms. Alper, you also testified that you took pictures
20 of sexually explicit conduct at certain clubs in the 1980s and
21 '90s, correct?

22 A Yes.

23 Q And these clubs are for people 21 years and older?

24 A Yes.

25 Q And access to the club was restricted by people at the

Alper - Cross (Swi)

234

1 door checking IDs, right?

2 A Yes.

3 Q And because the club employees were checking IDs at the
4 door, you assume that the age limits are being enforced, right?

5 A Correct.

6 Q So you yourself never checked IDs.

7 A That's correct.

8 Q And when you were taking pictures of people at S&M clubs,
9 did you ever photograph anyone under the age of 25?

10 A I don't know.

11 Q And, in fact, you don't know whether anybody was under the
12 age of 25, because you weren't checking IDs, right?

13 A Yes.

14 Q And, Ms. Alper, you stopped taking pictures at S&M clubs
15 in 1995 because the club shut down, right?

16 A That's not accurate. The clubs were actually shut down
17 much earlier than that. They were shut down in the early '80s.

18 Q Okay. And that's when you stopped taking pictures at the
19 clubs because they were shut down?

20 A Yes.

21 Q And they shut down because of the AIDS crisis, correct?

22 A I think that's probably a fair assumption.

23 Q Now --

24 A That was the early to the mid-'80s somewhere. I'm not
25 exact -- not exactly when the clubs were closed.

Alper - Cross (Swi)

235

1 Q Okay. And some of the images you took at S&M clubs were
2 exhibited at art galleries, right?

3 A Yes.

4 Q And they were for sale at the art galleries?

5 A Yes.

6 Q And Ms. Alper, since 1995, the only sexually explicit
7 images you've taken are ones of you and your husband, correct?

8 A No.

9 Q There are other images you've taken since 1995?

10 A Yes.

11 Q Sexually explicit images?

12 A Yes.

13 Q The images of you and your husband were taken in your
14 home, correct?

15 A Not only in my home. No.

16 Q And you took images of you and your husband on about ten
17 different occasions?

18 A I can't be specific as to how many times.

19 Q Was it approximately ten?

20 A Honestly, I can't say.

21 Q And these images were mostly taken about the last five
22 years or so, right?

23 A Pretty much. Yeah.

24 Q And some of the images of you and your husband were
25 published in a Norwegian magazine, correct?

Alper - Cross (Swi)

236

1 A Yes.

2 Q And the name of that magazine is Cupido?

3 A Cupido.

4 Q Cupido. And, Ms. Alper, you recall that your attorney
5 sent the Government information about your gross revenues from
6 the publication of sexually explicit images in Cupido, is that
7 correct?

8 A I -- I believe so. I don't know.

9 Q Do you recall that you sold images to Cupido in 2010 for
10 \$360?

11 A I can't be sure of the exact amount, but if that's what it
12 says, yes.

13 Q And those images that were sold in 2010 were images of you
14 and your husband, right?

15 A Yes.

16 Q Ms. Alper, it's fair to say that it's difficult to tell
17 the age of a person just by looking at them, right?

18 A Yes.

19 Q And this is because people age differently?

20 A Sure.

21 Q Ms. Alper, I'd like to show you a photo that we looked --
22 that you looked at previously with plaintiff's counsel.

23 MR. SCHWARTZ: If we could pull up Plaintiff's
24 Exhibit 43, and go to the third page of this exhibit. There we
25 go.

Alper - Cross (Swi)

237

1 BY MR. SCHWARTZ:

2 Q So, Ms. Alper, you recognize this to be a picture you took
3 at an S&M club, correct?

4 A No.

5 Q You recognize this to be a picture you took at a club in
6 Bangkok?

7 A Correct. It was actually a bar.

8 Q And you don't know the exact age of the woman depicted in
9 the photograph who's kind of kneeling down, correct?

10 A Correct.

11 Q And part of the reason that it's difficult to tell the
12 exact age of the woman is because you weren't checking IDs at
13 this club, right?

14 A Right.

15 Q And another reason is -- it's difficult to tell the exact
16 age of this woman is because her face is partially obscured,
17 correct?

18 A Yes.

19 MR. SCHWARTZ: And if we could go to the next page in
20 this exhibit.

21 BY MR. SCHWARTZ:

22 Q And, Ms. Alper, this is another image of sexually explicit
23 conduct that you've taken, correct?

24 A Yes.

25 Q And do you know the exact age of the woman depicted who

1 appears to be spanking the man?

2 A No.

3 Q And part of the reason that it was difficult to tell the
4 age of this woman is because you weren't checking IDs, right?

5 A Yes, but again, this was taken at the Hellfire Club where
6 you had to be over age in order to get in, plus based on the
7 body shapes of these people, they're older.

8 Q And, Ms. Alper, you don't have any special training in
9 determining a person's age based on visual appearance alone,
10 correct?

11 A Correct.

12 Q Now, Ms. Halper, you mentioned that you'd like to produce
13 a book containing a compilation of photographs that you've
14 taken?

15 A Yes.

16 Q And some of the pictures you'd like to include in that
17 book are sexually explicit images that you've previously taken.

18 A Correct.

19 Q And a lot of these are -- or these are the sexually
20 explicit images that you took before the 2257 recordkeeping
21 requirements took effect in 1995.

22 A Yes.

23 Q So you believe that 2257 prevents you from including the
24 pre-1995 sexually explicit images in any compilation.

25 A Correct.

Alper - Cross (Swi)

239

1 Q And this is because you don't have photo IDs for the
2 performers.

3 A I don't have photo IDs for people I've photographed after
4 1995, and if I combine them with images taken after 1995, I
5 would need to have IDs for all those people photographed before
6 1995.

7 Q And you haven't contacted a publisher about putting
8 together a compilation, correct?

9 A I have -- I have shown the work to people who are
10 connected with publishers who are starting to help me edit the
11 work to present to -- for publication.

12 Q But you never contacted a publisher specifically.

13 A I think, actually, I did contact one a while back.

14 Q Do you recall the date?

15 A Not exactly. No.

16 Q Was it in two --

17 A Within the last couple years.

18 Q Okay. So you -- you're testifying today that you have
19 contacted a publisher about producing a compilation of your
20 photographs, is that correct?

21 A Yes.

22 Q Okay. Ms. Alper, do you remember being deposed in this
23 case?

24 A Yes.

25 Q And you were deposed by my colleague, Ms. Wyer, isn't that

Alper - Cross (Swi)

240

1 right?

2 A Yes.

3 Q And this was in March 2013?

4 A Yes.

5 Q And Ms. Baumgardner was also present, correct?

6 A Yes.

7 Q And before you answered questions at your deposition, you
8 were sworn by the court reporter to tell the truth, weren't
9 you?

10 A Yes.

11 Q And you did tell the truth.

12 A Yes.

13 Q And that's the same oath that you took today.

14 A Yes.

15 Q So, Ms. Alper, I'm going to read from a page of your
16 deposition. This is page 46. I'd like you to follow along and
17 make sure that I'm reading correctly, please. Page 46, line 5,
18 the question is --

19 Q "Have you contacted any publisher about a specific project
20 that would involve a compilation such as you have described?"

21 The answer --

22 A "Not yet."

23 A Not yet. Right.

24 Q Now, Ms. Alper, you've also mentioned that you'd like to
25 photograph sexually explicit images of other couples, correct?

Alper - Cross (Swi)/Redirect (Mur)

241

1 A Yes.

2 Q And you say that they are not willing to give you their
3 photo IDs in order to be photographed.

4 A Yes.

5 Q But, in fact, the number of people have said -- said this
6 to you is less than ten, correct?

7 A I can't be exact.

8 Q And you've never had a publisher tell you that they won't
9 publish depictions of couples having sex because of 2257,
10 correct?

11 A That's correct. That's not been discussed.

12 MR. SCHWARTZ: No further questions, Your Honor.

13 THE COURT: Okay. Redirect?

14 REDIRECT EXAMINATION

15 BY MR. MURRAY:

16 Q Ms. Alper, I think you were about to say something about
17 the answer you gave in the deposition about not yet contacting
18 the publisher.

19 A Right. I had -- at the time of the deposition, I'd
20 forgotten that through a friend of mine who is a friend of --
21 of someone who works with a publishing company had suggested I
22 contact her, and so through an e-mail exchange. That was the
23 -- pretty much the extent of the contact. I hadn't shown her
24 -- them any complete body of work. So that's --

25 Q Did you remember that at the time of your deposition?

Alper - Redirect (Mur)

242

1 A No.

2 Q Okay. Now, you were asked questions about whether or not
3 you can tell the exact age of a person by looking at the, and
4 you said no, you can't, correct?

5 A Yes.

6 Q Okay. Do you believe, however, that generally speaking,
7 by looking at people, you can generally tell whether they're
8 over the age of majority, over 18?

9 A Yes.

10 Q Is there -- if you look around, at least the front part of
11 this courtroom, is there anybody here that you would be -- find
12 confusing as to whether they're an adult or a minor?

13 A No.

14 Q But could you -- could you guess the exact ages of anybody
15 in the front part of this courtroom?

16 A I -- I could start guessing. I don't want to embarrass
17 anyone.

18 Q But you couldn't tell their exact age.

19 A No.

20 Q But you could tell that they're obviously not under 18?

21 A Correct.

22 MR. MURRAY: That's all I have. Thank you, Your
23 Honor.

24 THE COURT: Well, two questions. Well, two topics.

25 BY THE COURT:

1 Q With regard to the photographs of you and your husband
2 that you referred to as sexually explicit, you -- some of those
3 were taken before you were married last September, is that
4 correct?

5 A Yes.

6 Q Okay. Did you intend to publish some of them when you
7 took them?

8 A I take pictures without thinking of that intent. I
9 photograph because I'm interested in photographing.

10 Q Well, did you -- you're -- you're aware of 2257 because of
11 your work, is that correct?

12 A Yes.

13 Q All right. When you actually took the pictures of your
14 husband and -- they were -- they're all digital?

15 A Yes.

16 Q All right. Did you at that time make any effort to comply
17 with 2257?

18 A Pictures of my husband and myself?

19 Q Yeah.

20 A Even though before I -- we were -- we were living --

21 Q Whether before you were married or after you were married.

22 A We were living to -- no.

23 Q All right. Now, but then you -- I thought you said on
24 direct that you have -- since taking the pictures, you have
25 published some of them of you and your husband.

1 A Yes.

2 Q All right.

3 A In a foreign publication.

4 Q In a what?

5 A Foreign publication.

6 Q Okay. So there was no need to comply with 2257.

7 A Correct.

8 Q All right. But you haven't sought to have them published
9 in the United States.

10 A Not yet.

11 Q All right. If you were to do that, would you comply with
12 2257 or not or --

13 A It --

14 Q -- if you know?

15 A It makes me uncomfortable, because not only am I
16 publishing pictures of my husband and myself, but I'm also
17 having to give out our address, because the address of where
18 the records are being stored is my home, our home.

19 Q Okay.

20 A So that's extremely uncomfortable.

21 Q All right. But do -- well, let me ask you this question.
22 Do -- even though it makes you uncomfortable, would you do it,
23 or have you thought about whether you would do it or has that
24 been a reason why you haven't published them in the United
25 States?

1 A That's not the reason I haven't published them in the
2 United States, and I guess that's something I'm going to have
3 to confront at the time that they are published.

4 Q Okay. So you haven't formed any opinion or course of
5 action about that yet.

6 A No, I haven't.

7 Q All right. Now, you said earlier in response to one of my
8 questions that you were opposed to photographing -- doing your
9 work as you've described it here today of people who are under
10 18, correct, and you thought it was not right? As well as
11 being illegal, you thought it was improper, right?

12 A Correct.

13 Q Now, are you -- would you agree that there are some people
14 under 18 and perhaps who are very well sexually developed,
15 whether male or female, who want to do this kind of work,
16 appear in sexually explicit photographs or movies, because --
17 if only because of the economic advantage, that they get paid
18 -- they could get paid probably more doing that than doing
19 something else?

20 A I'm not aware of any --

21 Q You're not aware of that --

22 MR. MURRAY: Your Honor --

23 A I -- one, I'm not --

24 THE COURT: What?

25 MR. MURRAY: I know you said we could object --

1 THE COURT: Yes.

2 MR. MURRAY: -- even to your questions, but I do
3 think -- well, that's all right.

4 THE COURT: If you want to object, say objection.
5 I'll rephrase the question.

6 MR. MURRAY: Well, I'm interested in her answer too
7 now.

8 THE COURT: Well, I don't know.

9 BY THE COURT:

10 Q Do you want me to rephrase the question? Do you
11 understand the question?

12 A One, I don't work with professional actors. So when you
13 talk about people who want to do sexually explicit image -- who
14 want to be photographed sexually explicitly because it's
15 monetarily lucrative, those are not people that I'm interested
16 in photographing anyway --

17 Q Okay.

18 A -- whether of --

19 Q All right. So you're -- okay.

20 A So I wouldn't come across that.

21 Q All right.

22 A There could very well be people who are interested in
23 doing that who are under age. I'm not interested in
24 photographing them.

25 Q All right. Do you think there is a social value in the

1 laws against photographing children under the age of 18 in
2 sexually explicit situations?

3 A Yes.

4 Q All right. Do you believe that Section 2257 serves that
5 social value? Aside from the regulations that have to do with
6 recordkeeping --

7 A I --

8 Q -- and things like that.

9 A I think there are already existing State and Federal laws
10 that prohibit child pornography that take care -- that -- that
11 cover those instances and insure that photographers --
12 professional photographers will not be doing child pornography.

13 Q Well, but isn't one way professional photographers can
14 make sure they're not photographing juveniles, people under 18,
15 is by asking them to produce evidence of how old they are?

16 A Yes. I don't see anything wrong with asking them to
17 produce evidence.

18 Q Okay. Thank you.

19 A But I think that's separate from 2257.

20 THE COURT: Okay. Thank you. Any questions?

21 MR. SCHWARTZ: Your Honor, if I may on redirect?

22 THE COURT: Yes.

23 MR. SCHWARTZ: Recross. Excuse me.

24 RECROSS-EXAMINATION

25 BY MR. SCHWARTZ:

1 Q Ms. Alper, in response to the Court's questions, you
2 testified that you object to providing your home address on
3 photographs, is that correct?

4 A Correct.

5 Q Now, Ms. Alper, you also have a profile for your business
6 on a website called Yelp, correct?

7 A Yeah.

8 Q And Yelp is a publically available website where people
9 can search for services in a particular area.

10 A Of course.

11 Q So -- and you -- you have that profile for your business
12 on Yelp so that people will see your business if they're
13 looking for a photographer.

14 A That's correct.

15 Q So, Ms. Alper, I'd like to show you Defendant's Exhibit
16 10.

17 MR. SCHWARTZ: If you can pull that up.

18 A Yeah.

19 BY MR. SCHWARTZ:

20 Q And do you recognize this document?

21 A I do.

22 Q What do you recognize it to be?

23 A It's a Yelp posting of my photography business.

24 A And so this is a true and accurate reflection of your
25 business profile on Yelp?

Alper - Recross (Sch)

249

1 A Yeah, but that has nothing -- that's -- I don't -- I'm not
2 advertising my sexual imagery or posting images of myself and
3 my husband or any other sexual images in connection with my
4 commercial photo journalistic editorial work that I do for, you
5 know, newspapers, corporations --

6 THE COURT: But that is --

7 A -- universities.

8 THE COURT: Is that your home address?

9 A Yes, it is.

10 BY MR. SCHWARTZ:

11 Q And that's your home address in the upper left-hand
12 corner of the page, is that right?

13 A Yeah.

14 Q Okay. And that's the address that you use for your
15 business as well?

16 A Yes.

17 MR. SCHWARTZ: Okay. No further questions, Your
18 Honor.

19 THE COURT: Okay. Thank you. You're excused. Next
20 witness?

21 MR. MURRAY: Your Honor, may I just ask one follow-
22 up --

23 THE COURT: Yes. Sorry. Go ahead.

24 MR. MURRAY: -- to make sure that the record is
25 clear?

Alper - Redirect (Mur)

250

FURTHER REDIRECT EXAMINATION

BY MR. MURRAY:

Q When you said that you wouldn't want to have your home address on the label on the images, explain the difference between that and posting your home address for your --

A Right.

Q -- photo journalism professional.

A With -- as I understand with 2257, you have to post with every photograph where the records are being kept. So the records are being kept at my home. So if they were attached to photographs of myself and my husband or anybody else I'm photographing, then it is showing myself and my home address.

Q In a sexual pose.

A In a sexual pose.

Q Do you have any --

A And that makes me -- that's uncomfortable. That's completely separate from my advertising my photography business.

MR. MURRAY: Thank you.

THE COURT: Okay. Thank you. All right. Thank you very much. Next witness?

MR. MURRAY: Your Honor, at this time, the plaintiffs would call plaintiff Thomas Heinz.

THOMAS HYMES, PLAINTIFF'S WITNESS, SWORN

THE CLERK: Please state your full name and spell

Hymes - Direct (Mur)

251

1 your last name for the record.

2 THE WITNESS: Tom Hymes, H-Y-M-E-S.

3 DIRECT EXAMINATION

4 BY MR. MURRAY:

5 Q And what is your city of residence, Tom Hymes?

6 A Van Nuys, California.

7 Q And, Mr. Hymes, what is your current occupation?

8 A I'm a senior editor at Adult Video News, AVN.

9 Q Okay. And how long have you held that position?

10 A Currently, since 2009. I was first employed there in
11 1999.

12 Q And why don't you tell the Court what your background is
13 going back to your education.

14 A I went to Amherst in Boston. I did not graduate. Then I
15 went back to New York and studied theater and acting, and then
16 I came out to Los Angeles and continued to pursue that and
17 writing, and then segued into -- I was offered a job to write
18 at AVN, and then they started this magazine called AVN Online,
19 and I previously had no interaction with the adult
20 entertainment whatsoever, and I -- I took it, and -- and then I
21 eventually became the editor in chief of the magazine, and then
22 my career has continued in adult.

23 Q So how long -- so you've been a journalist in the --
24 focusing on adult entertainment for how long?

25 A Since 1999.

Hymes - Direct (Mur)

252

1 Q And --

2 A So for 14 years.

3 Q And what does AVN stand for?

4 A Adult Video News.

5 Q Okay.

6 A It's called AVN Media Network now.

7 Q And have you worked for other journals that --

8 A I worked for XBIZ. I was the publisher at XBIZ for a
9 couple of years. Yes.

10 Q And is that another publication that covers news relating
11 to the adult industry?

12 A It is a competitor media company in the adult industry.

13 Q Okay.

14 A A trade media company.

15 Q All right. So you've been a journalist in this field for
16 how many years then?

17 A About 14.

18 Q Okay. And among other issues, have you covered 2257?

19 A I have.

20 Q Okay. Have you written about it?

21 A I have.

22 Q And have you spoken about it?

23 A I have.

24 Q Okay. In addition to your activities as a journalist for
25 these publications, do you also have a website --

Hymes - Direct (Mur)

253

1 A I do.

2 Q -- of your own?

3 A Yes.

4 Q And what is the name of that website?

5 A It's called DailyBabylon.com.

6 Q And when did you first create that website?

7 A Some time in 2009.

8 Q And what was the original purpose of that website?

9 A The original purpose was to create a -- a commercial
10 enterprise with partners that reflected art interests not just
11 in the -- the adult entertainment industry, but other issues,
12 cultural and -- and artistic and -- and things of interest to
13 us, but included in that would have been our -- you know, our
14 current area of expertise, which was sexuality in the adult
15 industry.

16 Q And did you, in fact, launch that website at some point?

17 A We did.

18 Q And approximately when did you launch it?

19 A In 2009. I don't remember the exact month.

20 Q And how successful was it?

21 A Well, it was not successful, because our core group of
22 people -- this was after, of course, the recession and we were
23 trying to make something happen, and there were three partners,
24 me and another write colleague of mine, and then a third
25 partner who was going to run the business and be our CEO. We

Hymes - Direct (Mur)

254

1 would create or acquire the content, my -- Kathee Brewer, my
2 partner and me, and then the other partner would take care of
3 the business.

4 The business partner couldn't follow through. His
5 own business fell apart. He couldn't follow through with this
6 venture. Kathy and I kept it up as long as we could, but we
7 didn't have any really resources or money. So we had to go --
8 I was working freelance at the time, but it wasn't sustaining
9 me. I had to go and get a job.

10 Q Okay. And so you've been full-time employed ever since?

11 A Yes.

12 Q And what became of Daily Babylon?

13 A Well, Daily Babylon still exists. It entered a period --
14 a moribund period. It never went offline except for -- I had a
15 bad accident. I was in the hospital. I thought I had
16 reregistered it, but I didn't. So Go Daddy took it offline,
17 but as soon as I got out of the hospital, I realized it. I
18 re-upped. I just registered it for another two years. So it
19 still exists.

20 Q Okay. And are you now the only person involved in it?

21 A I am.

22 Q And do you work out of your home for it?

23 A I do.

24 Q Okay. And I want to show you what's been marked as
25 Plaintiff's Exhibit 64 and ask you if you can identify that

1 document, sir.

2 A That's the whole page.

3 Q Of your website?

4 A Of Daily Babylon, correct.

5 Q And let me ask you this. What -- what type of information
6 do you currently host on the Daily Babylon?

7 A Currently, I'm just posting up sporadically when I have
8 time. I posted something up a few days ago and then about --
9 last week I posted up something. I'm keeping it going now,
10 because I have to move it from the Joomla platform to a
11 WordPress platform. I need to redesign the site. It's a full
12 on website right now that was built to -- to be like a full
13 media site. But I'm one person. So I need to pare it down,
14 keep it essentially the same but make it more manageable so
15 that I can run it myself, and I'm in the process of doing that.

16 Q And are you still going to cover the adult industry in
17 this?

18 A I want to.

19 Q Okay. Now, in connection with that kind of work, you --
20 you are familiar with 2257 and 2257(a).

21 A I am.

22 Q And can you tell the Court how those statutes, if at all,
23 affect your plans for what you want to do with Daily Babylon?

24 A They -- I'm doing everything I can -- I'm avoiding 2257
25 completely with this website. So, in fact, they do not affect

Hymes - Direct (Mur)

256

1 me, because I have made the decision -- the necessary decision
2 that I need to avoid them.

3 Q Well, so when you say they haven't affected you, does that
4 mean that there are not things that you would like to publish?

5 A They're -- they're literally chilling my expression.
6 There's things I will not do. There's images I will not post.
7 There's places I will not go, because I am not interested or
8 willing to trigger 2257.

9 Q Well, are those places and are those images things that
10 you want to post and would post but for 2257?

11 A Yes.

12 Q And explain to the Court what some of those images are and
13 how they would relate to the editorial content of the Daily
14 Babylon.

15 A Well, the -- the site -- I don't envision the site to be
16 like a "porn site", but I write about the industry. I'm a
17 writer, plus I go to trade shows. I go to clubs. I like to --
18 I would take photographs that I would use. So I want to
19 illustrate my stories, or I might be in a place where I want to
20 use images that -- and acquire images.

21 I don't -- you know, I don't know exactly where I
22 would want to go, but where I would want to go and the types of
23 images that I would want to post up on the site would
24 definitely trigger 2257 and also 2257(a).

25 Q And so why are you unwilling to post those images and just

Hymes - Direct (Mur)/Cross (Wye)

257

1 comply with those statutes?

2 A Because -- my reasons are because I am not -- I work out
3 of home, a small little apartment. I'm married. I have a
4 9-year-old son. I'm not willing to have a warrantless search
5 where FBI agents are taking pictures of the interior of my
6 apartment, and also, more importantly, I'm not able to comply
7 with 2257, because I still need a day job. So I need to go to
8 work, and that means I could very well not be at home at the
9 time of an inspection, and that's extremely problematic for me.

10 Q And so you have chosen to avoid using any of the images
11 that you would otherwise use?

12 A I have.

13 MR. MURRAY: That's all I have. Thank you, Your
14 Honor, other than to offer into evidence Plaintiff's Exhibit
15 64.

16 THE COURT: Cross-examine.

17 CROSS-EXAMINATION

18 BY MS. WYER:

19 Q Hello, Mr. Hymes.

20 A Hi.

21 Q You have never produced sexually explicit material,
22 correct?

23 A No.

24 Q You have never created or kept records under 2257 or
25 2257(a), correct?

1 A No. Correct.

2 Q And you have testified that since you began working in the
3 adult entertainment industry, you have spent most of your
4 career at one -- one or another of the large adult
5 entertainment media outlets, correct?

6 A Correct.

7 Q And you are currently working full-time at AVN as a senior
8 editor, correct?

9 A Correct.

10 Q And you work 60 or 70 hours a week for AVN, correct?

11 A At a minimum.

12 Q And then you also testified that for a brief period in
13 2009, you and two partners had attempted to establish a new
14 project by launching Daily Babylon, correct?

15 A Correct.

16 Q This was supposed to be a new business that would allow
17 you to make money and would actually support you independently,
18 correct?

19 A Correct.

20 Q You launched this website in April 2009, correct?

21 A Correct.

22 Q But by -- you testified that by the end of 2009, both
23 partners had left, and Daily Babylon was no longer an active
24 project, and that's in the sense that you had intended,
25 correct?

1 A In the original -- in the original sense.

2 Q And your partner that had been the CEO, his business fell
3 apart, correct?

4 A His other business, yes.

5 Q And the other partner left.

6 A Well, she continued to post with me and then just got
7 really busy too. She still to this day says she'll post, but
8 she has so many projects and is really business. She's a close
9 friend, and she's a colleague, and so we'll see.

10 Q And so at the end of 2009 is when you started again to
11 work at AVN, correct?

12 A Yes.

13 Q And once you started working at AVN again, you no longer
14 had very much time, and you were unable to continue actively
15 working on Daily Babylon.

16 A I was -- it entered some dry periods, but I maintained the
17 website, and I also maintained the -- the e-mail address
18 associated with it. So there's many businesses where the way
19 that they contact me is through my Tom@DailyBabylon address.
20 I've kept Daily Babylon alive to the extent I have been able
21 to, because I am not willing to let it go, and I'm not going
22 to.

23 Q So you pay the -- whatever fees necessary to keep it
24 online.

25 A Yes.

Hymes - Cross (Wye)

260

1 Q But you have no definite plans to quit your job at AVN.

2 A I do not.

3 Q Let me show you Exhibit 77. I'll just -- I'll just hand
4 you a copy since it's multiple pages and you can -- do you
5 recognize this?

6 A Yes.

7 Q This is a printout of -- actually, if you go through it,
8 it's a printout of different tab sections from Daily Babylon.

9 A Well, it's -- it's the page. It looks like it's -- it's
10 actually still the home page. This is what the home page looks
11 like except for the bottom part is missing.

12 Q Okay. So because of the way that it printed out. So if
13 you -- if you look at the -- along the top --

14 MS. WYER: First I'll move to admit Defendant's
15 Exhibit 77.

16 BY MS. WYER:

17 Q So along the top are different tabs, correct?

18 A Correct. Yes.

19 Q Home, Culture and Society, Legal Politics, Pink Card,
20 Money, Adult Biz., correct?

21 A Yes. Yes.

22 Q 'Tude --

23 A Yes.

24 Q -- and About Babylon, correct?

25 A Correct.

Hymes - Cross (Wye)

261

1 Q So page 1 of Exhibit 77, which is Bates stamp 924, that's
2 the top of the home page of Daily Babylon, correct?

3 A The tabs?

4 Q This first page is -- the top is --

5 A Yeah. It's the top part of the home page.

6 Q Yes. And if you look at the next page, it's double-sided,
7 that's --

8 A Oh.

9 Q -- continuing on of the home page. So there's -- those
10 three pages consist of a printout --

11 A Okay.

12 Q -- of the home page, correct?

13 A All right. Got you.

14 Q And then on -- let's see -- page 4, which is Bates stamp
15 927, is the top of the Culture and Society tab, which is the
16 second tab, correct?

17 A Correct. Yes.

18 Q And if you look at that, the top of that page, you see
19 that the first story is -- which is -- the first story on that
20 page is the most recently posted story, correct?

21 A At the time this was copied. I think I posted up a few
22 stories since then. So --

23 Q This was copied on May 16th, 2013.

24 A All right.

25 Q So at that time, May 16, 2013, which is two weeks ago or

Hymes - Cross (Wye)

262

1 so, the most recent story was dated April 19, 2011, is that
2 correct?

3 A I'll take your word for that. I don't recall, but -- but
4 I have no reason to dispute that.

5 Q The most recently posted story would appear at the top.

6 A That's fine. This -- it says that. So that's correct.

7 Q And then the next most recently posted story was posted on
8 April 5, 2011, is that right?

9 A Correct.

10 Q And then the one before that was posted October 7, 2009,
11 is that correct?

12 A Correct.

13 Q And if we go to Bates stamp 930, that is the top of the
14 third tab, which is Legal Politics, correct?

15 A Where am I looking? Sorry?

16 Q Do you see at the bottom, there's --

17 A Oh, Politics & Law?

18 Q Yes.

19 A Yeah. Okay.

20 Q So at the top of the third page, which is the third tab on
21 the website, Legal Politics, which is titled Politics & Law,
22 correct?

23 A Correct.

24 Q And the most recently posted story on that page as of
25 May 16, 2013 was August 29, 2009, correct?

1 A Correct.

2 Q And then if we go to Bates stamp 933, that is the top of
3 the fourth tab on the Daily Babylon website, which is Pink
4 Card, correct?

5 A Correct.

6 Q And the most recently posted story on that page as of
7 May 16, 2013 was July 31, 2009, correct?

8 A Correct.

9 Q And if you go to Bates stamp page 936, that is the top of
10 the fifth tab, which is Money, correct?

11 A Yes.

12 Q The most recently posted story on that page as of May 16,
13 2013 was April 9, 2011, correct?

14 A Correct.

15 Q And the most recent story before that one was posted
16 October 27, 2009, correct?

17 A Yes.

18 Q And then if we look at Bates stamp page 939, that is the
19 sixth tab, Adult Biz, correct?

20 A Yes.

21 Q And the most recently posted story on that page is
22 April 22, 2011, correct?

23 A Yes.

24 Q And the story posted before that, the most recently posted
25 story before that is dated August 4, 2009, correct?

1 A Yes.

2 Q And then if we look at Bates stamp page 941, that is the
3 -- one, two, three, four, five, six -- seventh tab titled
4 'Tude, correct?

5 A (No audible response).

6 Q And the most recently posted story there is April 20,
7 2011, correct?

8 A Yes.

9 Q And the one before --

10 THE COURT: How much -- how much longer do you think
11 you're going to be? Because it's quarter of 5:00, and if we
12 can avoid the witness coming back tomorrow, I'd like to --

13 MS. WYER: I -- I'm not exactly sure. I think it
14 probably would not take more than 20 minutes. I'm not sure.

15 THE COURT: Well, as I said, we -- I really don't
16 want to stay that late. I'm not sure where you're going with
17 this, just because if this is admissible in evidence, all these
18 dates are going to be in the document. I mean, I'm not sure
19 what all these -- what you're trying to prove, frankly, by
20 this, all these questions about the entries here --

21 MS. WYER: Well --

22 THE COURT: -- and the dates.

23 MS. WYER: -- these are going to the fact that there
24 are no recent posts. It has to do with standing.

25 THE COURT: Well, okay. Well, I mean, it's obvious

1 they're -- you know, they're spread out. There aren't very
2 many in the last few years, but I want to ask another question.

3 BY THE COURT:

4 Q You said that 2257 chills your expression, is that right?

5 A That is correct, sir.

6 Q All right. Well, how do you explain the thousands of
7 other pornography producers who are all over the internet and
8 put out movies and videos and magazines, and they comply with
9 2257, and they put out whatever they want to?

10 A They obviously have the resources or -- and are attempting
11 to be in compliance with 2257, similar -- similarly to if our
12 original idea had taken flight, we abide by the law. We would
13 have attempted to do that as well. It is my current situation.

14 Q You said because it's your economic situation, you can't
15 comply?

16 A It's my economic -- it's partially my economic. Yes.

17 THE COURT: All right. Well, I don't want to cut
18 this short if you all think it's important. Are you able to
19 come back here tomorrow morning?

20 THE WITNESS: I am.

21 THE COURT: All right. Well, then let's adjourn
22 today, and we'll resume tomorrow at 9:15. Okay. Thank you.

23 THE WITNESS: Thank you, sir.

24 MS. WYER: Your Honor --

25 THE COURT: All right. Now, once again, Mr. Hymes,

1 as I said with other witnesses, because you're under
2 cross-examination, I'm going to direct you not to discuss this
3 case or your testimony with any of the lawyers involved or
4 other witnesses.

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay? All right. Thank you. All right.
7 Let's just go off the record for a minute. Just about --

8 (Proceedings concluded at 4:41 p.m.)

9 * * * * *

10 C E R T I F I C A T I O N

11 I, Maureen Emmons, court approved transcriber,
12 certify that the foregoing is a correct transcript from the
13 official electronic sound recording of the proceedings in the
14 above-entitled matter.

15
16 _____ Date:

17 MAUREEN EMMONS

18 DIANA DOMAN TRANSCRIBING
19